# THE INITIATIVE AND REFERENDUM

## THIS BOOK TELLS YOU WHAT YOU OUGHT TO KNOW

BY


## JAMES BOYLE

Private Secretary of Governor Wm. McKinley;
Former Consul of U. S. to Liverpool, Eng.

Author of "Organized Labor and Court Decisions,"
"The New Socialism," "What is Socialism?" (In the Press.)



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BY MAIL 35 CENTS (Post-office Order or Stamps)

A. H. SMYTHE

43 SOUTH HIGH ST., COLUMBUS, OHIO

# THE

# INITIATIVE AND REFERENDUM:

## ITS

## FOLLY, FALLACIES, AND FAILURE

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# What Some Wise Men Have Said.

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"The American Constitution is the greatest work struck off at a given time by the brain and purpose of man."

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(Speaking of the "Rights of Man"):—
"Modern times have the signal advantage too, of having discovered the ONLY DEVICE by which these rights can be secured, to-wit:—government by the people, acting not in person, but by REPRESENTATIVES chosen by themselves."

DANIEL WEBSTER on Chronic Clamorers:—

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# Rainbow Chasing!

It is the old contest between idealism and stubborn, matter-of-fact reality. It is the story of the philosopher's stone over again—the dream of transmuting all the metals into gold—the hunt for the master key that will open all locks, however different in size and shape—the problem of fitting square pegs into round holes—the puzzle of how to eat one's cake and have it—the search for the chimera of perpetual motion—the quest for the mythical pot of gold at the foot of the rainbow—and all the other impossible undertakings which have vexed men's souls and turned their brains and filled the lunatic asylums since mankind was divided into those who see facts and those who see visions.

[*Speech of Hon. George Sutherland (of Utah), in the U. S. Senate, July* 11, 1911, *on "Government by Ballot."*]

# The Proposition Stated.

The Initiative and Referendum combined, constitute what is called "Direct Legislation," as a substitute for or supplementary to our present Representative system; and it is the modern form of the so-called "Pure Democracy" of the ancients.

### THE PROPULSIVE FORCE.

The "Progressives" have accepted the Initiative and Referendum as one of the cardinal articles of their creed;—indeed, many of them look upon it as the foundation-stone of their Temple of Reform. As will be shown hereafter, the propulsive force in the movement comes from certain groups of minorities; particularly Single Taxers (those who favor the placing of all taxation on Land Values, as advocated by Henry George). There are "chronic clamorers" (as Daniel Webster calls them), who always fall in line with the "latest thing out" in politics, religion, and every "cult," the principal feature of which is that it is "something new." But after a while the thing palls on them, and they cast it aside. At the same time, it is but

fair to say that thousands of patriotic citizens favor the Initiative and Referendum because they have absorbed the belief that Direct Legislation will remedy the admitted evils of the times,— particularly Legislative incompetency and venality. But they have not studied the matter beneath the surface; had they done so they would realize that Direct Legislation is— in these days, and especially for the American people—impracticable, revolutionary, and reactionary, and that it would be followed by a train of evils greater than those of which they complain; in fact, they would realize that these evils are not primarily or necessarily the fault— and generally not the fault at all—of the Representative system, imperfect as that system is, like everything else human; and they would come to the conclusion that most of these evils are the fault of the people themselves in not living up to their Civic obligations. Without entering into the details of suggested forms and variations and modifications of Direct Legislation, the following is a fair statement of the proposition, in a broad, general way:—

### THE INITIATIVE.

It is proposed to change the Constitution so as to give the right to a certain percentage of the voters to originate Amendments, and also to

originate general State-wide Statutory Laws, by petition.

The proposed percentage of voters required in a petition for a Constitutional Amendment is variously fixed,—according to the Radicalism or Conservatism of the advocate—from 5 to 12 per cent of the total number of voters in the State, it being generally—but not always—conceded that there should be a higher percentage required for Constitutional Amendments than for Statutory Laws. For an Initiative Bill the percentage named is generally 5, sometimes 8.

There is generally also a make-believe concession that an Initiative Bill shall, in the first instance, be presented to the Legislature in order to give that body an opportunity to pass it. But neither the Legislature nor anybody else is to be allowed to change or amend or correct the measure in the slightest—even though it may plainly be in conflict with other laws, unconstitutional or impracticable; and if the Legislature does not pass it exactly as presented the Secretary of State is to refer it to the people for action. It is proper to say that some advocates are willing that the Legislature shall be permitted—as is the case in Switzerland—to offer recommendations; but this concession is opposed by the Radicals; and anyhow, as the same organized minority which secured its Initiation are not

likely to favor any recommendation which will be important, and as that minority will be all ready for the campaign as against the unorganized majority, the concession does not amount to much.

### THE REFERENDUM.

Under the Referendum, all Constitutional Amendments and all Statutory Bills which have originated under the Initiative, as above explainly, must be referred to the people direct, for passage; also, if a certain percentage of voters petition that it be done, any Legislative Bill must be referred to the people for final passage.

The percentage of voters required on a Referendum petition is variously named at from 5 to 8 per cent. of the total number of voters. All Constitutional Amendments and Statutory Bills shall go into passage and become the law of the State—or the country at large, as the "reform" is intended in time to become National—if they receive A BARE MAJORITY OF VOTES CAST THEREON—even though that majority should be a DECIDED MINORITY OF ALL THE VOTES CAST at that particular election—as it always is.

This last point should be kept carefully in mind, as it is one of the foundation principles of the Initiative and Referendum.

While there are some slight variations, this is the prevailing form of the Referendum. It is called the OPTIONAL or FACULTATIVE Referendum. The extremists demand that ALL Bills passed by the Legislature shall be referred to the people for final passage, whether petitioned for or not; this form is called the COMPULSORY Referendum.

Under the Initiative and Referendum it is intended to ABOLISH THE GOVERNOR'S VETO,—that is, on all laws passed through the Referendum. Whether THE SUPREME COURT shall be allowed to pass upon the CONSTITUTIONALITY of such Laws is a hard nut for the advocates of the Initiative and Referendum to crack.

### AN IMPORTANT DISTINCTION.

It should be clearly understood that the Initiative and Referendum, as now demanded, is different entirely in principle from the existing system of referring Constitutional Amendments to the people for ratification after consideration and formulation by a Legislature or a Constitutional convention; so, also, the proposed system of Direct Legislation as to general Statutory Laws is very different from the well-known principle of "Local Option," or the reference to

the people—in Municipalities or the State at large, as the came may be—of specific, concrete propositions involving the issuance of bonds, the granting of franchises, etc., or some radical change in established policy. In the one case there is direct general legislation by the people in mass—in theory at least, although experience shows that a minority of the voters practically always decide the issue; while in the other case there is Conventional or Legislative action, under the long-established American Representative principle, as a condition-precedent. One system is absolutely opposed to the theory and practice of Representative government—and this is particularly so as to the Initiative; the other is perfectly consistent with that theory and practice. The plausible advocates of the Initiative and Referendum conveniently ignore this great distinction.

It is quite evident, therefore, that arguments which might apply favorably to what for distinction's sake we will call the Representative-Referendum practice, do not necessarily—and, indeed, they generally do not—apply to Direct Legislation under the proposed new Initiative and Referendum, for the passage of Constitutional Amendments and general Statutory Laws.

It must be confessed that to the average lay mind there is some difficulty in grasping the

distinction referred to; yet there is a fundamental distinction, subtle though it may appear at first. Under our present Representative system, Laws are passed by the Legislature, and no other power can pass them; while under the Initiative and Referendum the people pass Laws by Direct action. Yet there is a middle ground in regard to the going into effect of certain Laws under the Representative system, as above indicated. While the Legislature under our present Constitution cannot delegate the power to MAKE Laws, yet, under the well-known decision of the Ohio Supreme Court, rendered by Judge Ranney (who was a stanch upholder of the Representative system), the Legislature can confer an authority or discretion as to its execution; but it must be kept in mind that the power to pass the Law under which that authority or discretion may be exercised, remains with the Legislature. For instance, the Legislature passed the Local Option Laws under which communities can prohibit the liquor traffic; so, likewise, the Legislature can repeal those Laws.

A failure to take note of the distinction between the two forms of direct action by the people, is unquestionably the cause of a vast number of patriotic and intelligent citizens thinking that they favor the Initiative and Referendum, when really they do nothing of the kind. This fact

was notorious during the recent campaign in Ohio when members of the Constitutional Convention were elected.

# The Case Against the Initiative and Referendum.

"The Case Against the Initiative and Referendum" is made out first by argument, and secondly by giving the results of experience. To the reader the writer ventures to hope, in the words of Boswell: "I have found you an argument." But experience is better, for it is even "the teacher of fools;" and to the wise, also, according to Bacon (one of the wisest of men), "By far the best proof is experience."

### REVOLUTIONARY.

In principle and practice the Initiative and Referendum is Revolutionary, in that it is opposed to the established Representative system of our American Government. Of course it will not be disputed that the Constitution of the United States provides for the Representative system of Legislation in the Federal Government. Neither can it be disputed that the Fathers deliberately chose this system, after giving due consideration to other forms, including Direct Legislation, as was then being expounded by the brilliant but altogether unpractical French-

man, Rousseau, who believed that governments could not act "but when the people are assembled." With him Representative Government was only an evil; he opposed the election of Representatives to make laws, but held that Deputies should be considered only as Commissioners, who should not be qualified to conclude upon anything definitely. "No act of theirs," said Rousseau," can be a Law unless it has been ratified by the people in person; and without that ratification nothing is a law." Another erratic genius who created a stir at that period was Thomas Paine—that "phenomenon" and "disastrous meteor," as John Adams called him. Although an Englishman, Paine took a lively interest in the establishment of the independence of the American colonies. He advocated Rousseau's plan of government. At first even Benjamin Franklin seems to have been in sympathy with the Rosseau-Paine system, but, after a thorough exchange of opposing views, he agreed with the other framers of the Constitution in favor of the Representative system. The very first section of the First Article of the Federal Constitution reads: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The late Mr. Justice Harlan, of the U. S. Su-

preme Court, in an address delivered in December, 1907, thus explained the sort of Federal Government under which we have the privilege of living:

> "The national government, it should ever be remembered, is one of limited delegated powers and is not a pure democracy in which the will of a popular majority as expressed at the polls at a particular time becomes immediately the supreme law. It is a representative republic in which the will of the people is to be ascertained in a prescribed mode and carried into effect only by appointed agents designated by the people themselves in the manner indicated by law."

The advocates of the Initiative and Referendum look forward to the time when they can so amend the Constitution of the United States as to establish Direct Legislation in National affairs; but for the present they are content to confine their energies to the constituent States.

A question of great interest, and possibly of extreme importance, came to the front in November, 1911. On a case from Oregon the Supreme Court of the United States had submitted to it the question of whether or not the establishment of the Initiative and Referendum in any State is

in conflict with Section Four of Article Four of the Constitution of the United States, which declares that "The United States shall guarantee to every State in the Union a Republican Form of Government." In a nutshell, the question is: What is a "Republican form of Government?" —Does the word "Republican" mean exclusively a Representative system, or is it used simply as the antithesis of a Monarchial or an Autocratic form? The writer does not propose to enter into this discussion;—for, aside from his incompetency as a layman, he is quite content to let the Supreme Court settle the question. As a matter of fact, moreover, in opposing the Initiative and Referendum, he accepts—for argument's sake—the assumption of its advocates that it is quite within the "reserved" powers of the people of any State to so amend their Constitution as to permit Direct Legislation. This does not affect one jot his contention that the Initiative and Referendum is opposed to the Representative system as now existing in the several States——both in intent and effect. It may not destroy the form of the Representative system, but it certainly contracts and negatives its power as well as its dignity, as one of the three branches of the general American system of Government; and it also undoubtedly injuriously affects the character and spirit of both the Legislators and

their legislation, and inflicts upon the State, to a greater or less extent, the evils of the historic Pure Democracy.

### REACTIONARY.

The principles and practical effects of the Initiative and Referendum are Reactionary as well as Revolutionary. Those who advocate Direct Legislation are "Retrogressives," not "Progressives." They have their faces and feet turned not to the future, but to the past,—and that past is strewn with the wrecks and failures of Pure Democracy. It is admitted that the "moot" of Old England and the town-meeting of New England are equally unsuited to the conditions of to-day. So the Retrogressives have adopted the Swiss system of making laws by ballot, entirely ignoring the great differences in the government and the political, social, and geographical conditions of Switzerland as compared with those of the United States.

The Hon. Samuel W. McCall, Member of Congress from Massachusetts, in an address, "Representative as Against Direct Government," before the Ohio Bar Association at the Annual Meeting held at Cedar Point, Ohio, July 12, 1911, said:

> "The framers of the Constitution were entirely familiar with the fail-

ure of direct democracy in the government of numerous populations, and they were influenced by their knowledge of that failure in devising our own structure of republican government. It is now proposed to abandon the discovery of modern times, to which Jefferson referred, and which he declared to be the only method by which rights can be secured, and to put in its stead the discarded device of the ancients. Who, then, are the reactionaries: those who are opposed to the substitution of direct for representative government and are in favor of the progressive principles of the American Constitution, or the supporters of direct government who advocate the return to the reactionary policies which thousands of years ago demonstrated their destructive effect upon the government of any considerable populations?"

### THE UNDEMOCRATIC INITIATIVE.

The Initiative and the Referendum are really two distinct propositions, founded on antagonistic principles. The Initiative is based on the principle that a minority of voters—generally 8 per cent—shall be given the right not only to initiate Constitutional Amendments or Statutory

Laws, but to decide the exact form in which they shall be presented for passage, without giving the vast majority of the voters,—92 per cent—either directly or through their representatives, any opportunity to amend them. In this respect the modern Initiative is far inferior in principle to the ancient Pure Democracy, for the latter, theoretically anyhow, possessed the principle of majority rule. No law can formulate itself; the authority to formulate the law is equal to the power to pass it if the latter power does not include the right to change it or amend it before it is passed. Therefore, under the Initiative and Referendum, the majority—92 or 95 per cent—find themselves in this predicament: they must either accept the bill which the 8 per cent has drafted for them, on its own motion, and without consulting any other authority or proportion of citizens,—the majority must either do this, or they must succumb to Philosophic Anarchism—the absence of any Law except that of the individual will. Quite apart from the advantage of having received careful scrutiny and the safeguard of having to pass through several Committees, a Legislative Law has this immense superiority over an Initiative Law:—it is formulated by a majority of the voters of the State in a Representative sense;—that is, the Committees which recommend it are selected—directly or in-

directly—by a majority of the Legislature, which practically, in a numerical idea, represent a majority of the voters; then, if a majority of the members of the Legislature—who represent the majority of the voters of the State —want to do so, they can amend or change the Bill to meet their views. But an Initiative Bill represents the views of nobody but the signers of the petition—a small minority of the total number of the voters, and, human nature being what it is, probably a large proportion of the signers have not got the slightest knowledge of what they signed. It is notorious that men can be easily persuaded to sign petitions for almost anything.

The objections to the Initiative are so obvious to every student of political economy from the standpoint of both logic and experience, that its advocates are hard driven to produce authorities to back up their oratorical claims. A careful reading of some accepted National and International authorities quoted as supporting the Initiative and Referendum, shows that, as a rule, they do not refer to or include the Initiative at all, but only cover the Referendum,—and in some cases they only refer to the Referendum of Legislative Bills or Constitutional Amendments drafted by the Legislature or by a Convention called for that purpose. This is largely true of Prof. Bryce; and particularly of such economists

as Prof. Oberholtzer (the author of the one thorough standard book on the Initiative and Referendum in America), Prof. Lowell (probably the greatest American authority on foreign government and politics), Prof. Deploige, the eminent Belgian economist, and also of M. Numa Droz, the leading Swiss writer on the subject, who was for twenty years a member of the Swiss Federal Council (the highest Federal power) and an ex-President of the Republic. The proof of this is demonstrated by extracts quoted herein; and it will be seen that some of them, while they give a qualified endorsement to the Referendum in Switzerland, are absolutely opposed to the Initiative. But the Initiative and Referendum, as now proposed, in this country, must be taken as one system. If the mild and qualified approval sometimes given to the Swiss Referendum is to be applied to the Initiative, — as it is by the American apologists of the system—then, by the same token, the emphatic condemnation of the Initiative by the same writers, should be applied to the Referendum, when the two are combined in one system.

### REFERENDUM: THEORY VS. PRACTICE.

The theory of the Referendum must be conceded to be that the people—that is, a majority of the people—shall rule, in the final passage of

Laws. Yet in its universal application there is recognized the absolute right of a small minority —from 5 to 8 per cent of the total number of voters—to suspend Legislative Laws duly passed by the representatives of a majority of the people; and in practice it results in another minority finally passing these Laws, for the history of the Referendum is that only a minority of the electors vote for the propositions. Therefore, while in its outward form it expresses the will of the people, yet in substance it has the same undemocratic defect possessed by the Initiative—Minority Rule.

It is true that some economists contend that "silence gives consent" and that if a majority permit a minority to pass a Law, the majority have no right to complain. But the same argument holds good as to the Representative system: for undoubtedly most of the political evils of the day arise from the neglect of a large proportion of the people to avail themselves of their civic privileges and obligations. It is to be further remarked, also, that it is an experience seldom with an exception, in Switzerland as in America, that citizens take far greater interest in the election of men than they do in the passage of Laws. All observers, native and foreign, are impressed with the apathy of voters to the propositions submitted to them; and it has been demon-

strated in Switzerland that compulsory voting is no remedy, as from 20 to 30 per cent of the voters cast blank ballots. What is the remedy?—Certainly not giving people more of what they plainly show they do not want.

### DESTRUCTIVE TO REPRESENTATIVE GOVERNMENT.

The plea that the Initiative and Referendum is merely supplementary to the Representative system, to make it more effective, is opposed to both logic and experience. Thomas Jefferson knew what he was talking about when he declared that the REPRESENTATIVE SYSTEM was "the ONLY DEVICE" by which the rights of man could be assured. Legislators will assuredly have their sense of responsibility dulled by the Initiative and Referendum. The people can initiate laws; the people can pass Laws: therefore let the people be responsible;—and the argument is sound. But who will "Referendum" or "Recall" the people? Yet the people sometimes make mistakes,—though it is almost rank treason in these days of cheap fawning demagogy to say so—God's truth though it be!

Mr. Bryce—and there is no better outside authority—says in his "American Commonwealth," that Direct Legislation "tends to lower the authority and sense of responsibility in the

Legislature." In his last edition (1910) he declares that "the Initiative is a supersession of the Legislature which tends even more (than the Referendum) to reduce its authority." (p. 479.)

Originally the Portland "Oregonian" was in favor of the Initiative and Referendum; but after observing its operations for several years it came out emphatically in opposition to it. In one of its articles denunciatory of the Initiative and Referendum, it said, "It was not intended that representative government should be abolished by the new system; but it has been abolished by it;" and it predicts that "Oregon will yet return to it."

The greatest of our American authorities, Prof. Oberholtzer, says in the new edition (1911) of "The Referendum in America," that it will make officials "timid, shambling, ineffective men," and that "it is in conflict with the spirit and traditions of our political system."

A leading candidate for the Presidential nomination, Gov. Woodrow Wilson, one of our most learned University educators, says that "it has dulled the sense of responsibility among legislators, without, in fact, quickening the people to the exercise of any real control of affairs."

Still another great American educator, Prof. Lowell, President of Harvard, after showing that the Initiative and Referendum was estab-

lished in Switzerland because of the inexperience of that country with Representative government, affirms that, applied to ordinary Statutes—as is proposed—it is inconsistent with our polity, and could not be engrafted without altering its very nature.

Our American Minister to Switzerland, Hon. L. S. Swenson, in an impartial statement of the working of the system in that country, reports that "it lessens the sense of responsibility on the part of the legislator."

As Prof. Oberholtzer says in the addendum to the new edition of his work on the subject, the Initiative and Referendum is not only "un-American," but it is "un-English,"—meaning that it is opposed to the English representative system, on which our system is so largely based. A comparison of the English Representative system and the Initiative and Referendum plan will show this:

(1) Under the Initiative and Referendum, any proposition, though concocted in secret by a cabal, club, or caucus, and no matter how crude or vicious, or how little understood by the majority, or how new in principle, can be forced to popular vote by an insignificant minority.

Under the British Representative system, an "appeal to the country" (as it is called) is always on a measure—when the appeal is on a

measure—which has been formulated, scrutinized and presented under Parliamentary rules, by the Party which at least when elected represented the majority of the people. And, under the British system, it is men who are elected, not measures which are passed, when an "appeal to the country" is made.

(2) Under the Initiative and Referendum, cold, bare, abstract propositions are submitted, which by themselves never elicit enough public interest to draw out a majority affirmative vote.

Under the British system, the appeal is not only as to a measure, but as to men as well; without the latter, the former is often simply academic, if not lifeless; with it, there is the vitalization given by the touch of human interest.

It is the lack of the vitalizing touch of human interest which accounts for the deadening indifference to Initiative and Referendum propositions,—resulting in only minority action—so universally noted by observers of the system the world over.

### LABOR AND THE I. & R.

The Initiative and Referendum is not only a menace to honest and reform government, but is a false friend to Labor. It provides a device through which unscrupulous "special interests" can secure their ends with far greater ease than

they can under the Representative system, when they have familiarized themselves with its tricks and when the general public have become wearied of the numerous petitions and elections peculiar to the system.

In the first place, while it is not popular to tell the truth about the matter, yet it is the truth, whole communities can sometimes be politically debauched. This has been demonstrated in the two most democratic countries in the world —the United States and England. But, without the Initiative and Referendum, there has been established civic righteousness and electoral honesty in England, and under the Representative system the Dmocracy of Great Britain are now making greater strides than are being made in any other country. American politicians freely concede that, in the past, groups of voters in the different States have been bought up not only in "blocks of five" but in droves like sheep. Within the past year the proud State of Ohio has been humiliated by exposures of wholesale political venality in several of her counties. The Representative system was surely not responsible for that condition of affairs; on the contrary, it was a showing of what are the possibilities of Direct Democracy. And all this is true in spite of the undoubted fact, that at heart the great mass of the common people are honest.

American Trade Unionists have generally endorsed the Initiative and Referendum for the reason that they believe that through it they can secure certain reforms they demand. Possibly they might do so;— and probably also, they can in due time by the exercise of patience and intelligent agitation, secure the same reforms through the Representative system, should their demands appeal to the sense of reason and fair-play of the people of the State. But in advocating the Initiative and Referendum the Trade Unionists are short-sighted. If they, as an organized minority,—and that they are a decided minority of the total electorate must be conceded—can secure their demands through the Initiative and Referendum, so, likewise, can other minorities use the scheme for purposes that are altogether selfish. Because Switzerland has the Initiative and Referendum it is often spoken of as "the most democratic country in the world." As a matter of fact, however, so far as the wage-earners—the "proletariat"—are concerned, the United States, England, Australia, New Zealand, and Canada—all under the Representative system—are far more democratic and far more responsive to Labor's demands for reform, than is Switzerland. The reason is that, as explained elsewhere, the majority of the people of Switzerland are naturally

conservative and anti-Socialist, they being small peasant proprietors. No Labor man or Socialist will dispute the authority of Robert Hunter. In his "Socialists at Work" (1908) he says (speaking of Switzerland):

> "The electoral system is open to much fraud, which is unscrupulously practised by the capitalist parties to keep the workers from representation in the National Council. At the last election the socialists assembled 70,000 votes, by which they claim to have won 25 seats, but they were only allowed six. Recent inquiries have been made into the extent of exploitation of child-labor, with the appalling revelation that 53 per cent of the children attending school are also employed in laborious daily work. The school teachers complain that the mentality is now very low, and that 40 per cent of the children are stunted. Capitalism has become intense, and with it an almost savage system of oppression has been instituted by the government. * * * Switzerland has become notorious for the frequency with which the soldiery is used against striking workmen."

And all this in the model Initiative-Referendum Republic!

An estimate has been made that under the Initiative and Referendum as operated in Oregon, 10 per cent of the electorate practically make the Constitution and the Laws,—that is, that they control, that percentage being the difference between the affirmative and the negative vote on propositions submitted;—and it should always be remembered that the combined affirmative and negative vote under the system is only from 50 to 75 per cent of the votes cast for candidates at the same election. To those familiar with practical politics it is apparent that unscrupulous men, with money back of them, can so use the Initiative and Referendum as to be able to "throw" this 10 per cent as desired, for "special interests," or for partisan, class or even personal ends.

In fact, the Initiative and Referendum is a perfect Pandora's Box of political evils to torment the State.

### MEANS MINORITY RULE.

An overwhelming objection to the system is that wherever it has been tried it has resulted in minority rule. Even in Switzerland—the most favorable State possible for the system—Direct Legislation is always by minorities. This is so as to important as well as to comparatively trifling matters. The vote on the prohibition of absinthe

—a question of great interest in Switzerland—only reached 370,470, out of a total voting strength of over 800,000.

Prof. Oberholtzer says in his book, "The Initiative and Referendum in America:" "There is but a fraction equal to about half of all those who know their own minds respecting candidates who seem to care anything about measures." At special elections, "it is impossible to get out even half the vote, unless it be on a proposition to deprive a citizen of his beer or gin. . . . Even a proposal to enfranchise an entire new half of the race, and to double the electorate, or to ally the State openly with lottery men and gamblers."

What is true of Switzerland and the United States is true of Canada. In no country in the world are politics keener than in the Dominion, and public questions are discussed there as a rule with a fervor rare even in the United States. But the Canadians will not go to the polls to vote simply on propositions;—there must be "the human touch" of candidates to bring out the vote. On September 29, 1898, a National "plebiscite" on the question of prohibition was taken in Canada —that being a burning issue at the time, and Premier Laurier was strenuously importuned by the temperance element to pass a prohibitory Law covering the entire Dominion. So, in order

to test public sentiment, he referred the question to the people—or took a "plebiscite" on it, as it is called in that country. The number of registered voters was 1,236,423; the total number who voted on the proposition was 543,013—less than 44 per cent of the registered number of voters; while those who voted for prohibition was only 278,380; those against, 264,633;—a majority for prohibition of 13,747. Now, take careful note of this: Although the votes cast for Prohibition were only 22 1-2 per cent of the total number of voters, yet, under the undemocratic Referendum plan, that number of voters being a majority—although a small one—of the votes cast upon the proposition, prohibition would have been declared passed in Canada. But Canadian statesmen are reared in the British school of Representative government, and Premier Laurier very properly declined to accept the result as sufficiently decisive to warrant Parliamentary action; and even Prohibitionists conceded that he was right.

In an article by Phillip A. Allen in the Boston "Evening Transcript," May 23, 1906, figures were given showing the total vote upon various Laws and Constitutional Amendments,—17 in number. The percentage ranged from 78 to 19. In eight instances the vote was less than 50 per

cent; in only six instances did it exceed 60 per cent.

It is true that in Oregon the percentages on Initiative and Referendum propositions have been comparatively high; but there are three special reasons for this fact: (1) the novelty of the thing: — the Oregon people play with direct legislation as children do with a new toy; (2) the interest aroused by the woman's suffrage campaign;—and in Oregon, strange to say, there are women's organizations strongly opposed to female suffrage, as well as in favor of it; (3) the fact that Oregon is the home of some of the ablest and most fanatical of the National leaders of the Initiative and Referendum movement, — men who have devoted their lives to it, and who have become political potentialities through the organized minority forces which the system enables them to establish and control. But the day will come when the novelty will have gone, when the woman's suffrage movement will have settled itself, one way or another, and when the people will have tired of the leadership of the astute gentlemen who now "run things;"—indeed, there are evidences that that day is approaching.

Walter F. Brown, Chairman of the Ohio Republican State Central Committee, is in favor of the principle of the Initiative and Referendum.

But he feels constrained to confess, after personally investigating it in Oregon, that "the system in force there is far from perfect, and that it opens wide the door to the very abuses against which it is aimed, to-wit: legislation in the interest of a selfish minority." (See chapter on Oregon.)

The complaint is made in Switzerland that only about 43 per cent of the people vote (altogether) on propositions, under the Referendum. (See chapter on Switzerland.)

Less than 27 per cent of the voters, and only 6 per cent of the total population of the Territory of Arizona, voted for the Initiative-Referendum-Recall Constitution.

In October, 1911, California adopted a new Constitution including a number of radical amendments, among them being the Initiative, Referendum, Recall and Woman's Suffrage. These amendments were adopted by a minority of the qualified voters of the State,—that is, less than half of the voters of the State voted on the propositions, including affirmative and negative. There were 23 amendments submitted, and the official statement of the amendments filled 12 square feet of small solid print. It was simply a physical impossibility for the majority of the average voters to read and intelligently pass upon such a mass of matters; — so they simply

stayed away from the polls. The New York "Times" (Indep. Dem.), of October 18, 1911, speaking of the amendments — apart from the I. & R., Recall, and Woman's Suffrage says editorially, under the heading "Anti-Democracy in California:"

> "Most of them are not fit for constitutional enactment at all, but should be within the scope of the powers of the Legislature. * * * This new method of handling the basic law of the State is advocated in the name of democracy. In reality it is utterly and hopelessly undemocratic. While pretending to give greater rights to the voters, it deprives them of the opportunity effectively and intelligently to use their powers. * * * When the machine managers get familiar with the working of the new method, they will work it for their own ends far more readily than they work the present method. The average voter, muddled and puzzled and tired by the impossible task of really understanding and deciding on a mass of matters, will give it up, and then the politicians will get in their fine work. * * * It would be as easy to run the business of a big railroad by leaving every detail of its management to a vote of the shareholders

as it will be to run the business of a State under the new system."

The New York "Sun" says:

"Out of 43 of the 64 measures submitted in Oregon since 1904, only 75, or less than 75 out of 100 men who went to the polls, voted yes or no. In only 14 out of 32 cases in the last election did the percentage rise to 70 or more than 70. When the percentage is 70, 36 per cent of the voters can enact a law. * * * In the decade from 1899 to 1908 out of 472 constitutional questions submitted to the people of various states as many as 240 received less than half the vote cast for candidates. Only 8 reached or exceeded 90 per cent. In California in 1904, when 6 amendments were submitted to the people, none received more than 40 per cent of the vote; in 1906 when 14 amendments were submitted, the lowest percentage was 30, the highest 33. In Colorado in 1900 one amendment received 19 per cent. In Connecticut 3 amendments in 1905 varied from 18 to 22 per cent; 4 in Florida in 1900, from 24 to 32 per cent; 7 in the same state in 1904 from 22 to 30 per cent; 8 in New Jersey in 1903 from 11 to 12 per cent; 7 in New York in 1905 from 25 to 30 per cent; 3 in Pennsylvania in

1901 from 27 to 30 per cent; 2 in Virginia in 1901 from 10 to 11 per cent; 1 in Indiana in 1906 about 8 per cent; 1 in Ohio in 1903 only 6 per cent."

### "SERVES THE MAJORITY RIGHT!"

It is sometimes argued that if the majority fail to vote it is their own fault if the minority carry the day, — and that the majority then have no right to complain. It is not a matter of complaining, — it's a matter of adopting a system the universal experience with which is that it elicits the interest of only a minority of the voters. The argument referred to cuts both ways, — it can be used in favor of the Representative system with just as much force: for if the majority of the electors took sufficient interest to elect honest and capable men, there would, admittedly, be no need of the Initiative and Referendum; — and if this is not done, then the electors have no right to complain; the remedy is in the people's own hands, and if they don't use it it is their own fault. But human nature must be accepted as it is, and the wise statesman tries to utilize it to the best advantage. He certainly, however, will not make it easy for the minority to enforce its will against the majority, even though the majority is to blame, unless such a system is absolutely unavoidable. That is the best system of popular government which ap-

peals to the largest number of the electors in an intelligent manner, not in a mere transitory fashion, but continuously. There is something radically wrong with a system the inevitable and universal tendency of which is to cause a majority of the electors to practically disfranchise themselves. The Initiative and Referendum as an effective instrument of popular government is opposed to human nature and human experience; — that of itself absolutely condemns it.

### THE CITIES WILL DOMINATE.

Already 17 counties in which the large cities are situated can outvote the remaining 77 counties of Ohio. The report of the Secretary of State for 1908 shows that the vote of these 17 counties was in that year 571,545, while that of the other 77 counties was but 564,980. That difference keeps on increasing. The U. S. Census returns for 1910 show that in that year 60 per cent of the population of Ohio were in urban dstricts, leaving only 40 per cent in the country districts, — a change of 12 per cent in 10 years in increase of the urban population. Not only are native Americans flocking more and more into the cities, but the cities are yearly receiving vast multitudes of immigrants who do not speak our language, and who have not been reared in self-government as we understand it in America.

Is it not plain that the country folk are in imminent danger of being swamped as to legislation by the ever-growing multitudes of our cities? A sure way to bring that about would be by engrafting the Initiative and Referendum onto our Constitution. Is that desirable?

The advocates of the Initiative and Referendum clearly understand this; — in fact, it looks as if this is what they want, — they want to enforce their rule on the country districts, even though it will be by the monstrous injustice of Minority Rule, which is always the effect of the Initiative and Referendum. They know that this can be done not only through the increase of population of the cities over the country, but because experience with the Initiative and Referendum has demonstrated that the various classes, groups and special interests of the cities can be effectively organized through underhand and corrupt methods, if that be necessary, as the experience of Oregon, South Dakota, and even Switzerland, shows. Brand Whitlock, the fourth-term Mayor of Toledo, and the President of the Progressive Constitution League of Ohio, and who is being constantly heralded as an up-to-date Reformer, is reported to have said to a group of working men: "Under representative form of government the counties hold the balance of power. Under direct legislation the city will

control. The farmers have always been dead weight about the necks of the laboring men. We will get the Initiative and Referendum and will then give them a taste of the same kind of legislation they have been giving us." — (Address of Mrs. Mary E. Lee, at Fairview, Ohio, Aug. 23, 1911.)

Is that a statesmanlike utterance?

### THE GATE-WAY TO SOCIALISM.

The old "International" Socialists were the first organized political group to fully appreciate the stupendous use which can be made of the Initiative and Referendum to enable a minority to grasp the power of government. Unquestionably it is the realization of this fact which is giving such uneasiness to the more thoughtful and statesmanlike of the Swiss public men and political economists. So long as Switzerland was purely an agricultural and a pastoral country, with the small peasant proprietors in complete control, the Referendum (not the Initiative) was fairly successful, under the unique political system and social conditions of that country. But of recent years a change has commenced to come over the character of the population and in their social conditions; the proletariat has arrived.

As far back as 1869 the "International" ap-

proved the Referendum, at the Convention at Basle. It has since then — along with the Initiative — been one of the most prominent of the "immediate demands" of International Socialism. It appeared in the Program of Gotha, in 1895, and again in the Program of the Erfurt Congress. The Initiative, Referendum and the Recall are always included in the National and State platforms of the American Socialist Party. The Socialists, while they are in a dream as to the establishment of the Marxian "Co-operative Commonwealth," know what they want as to "immediate demands," and especially as to the Initiative, Referendum and the Recall. If Socalism is ever established in the United States — so far as it can be established — it will be through the Initiative and Referendum, should this glorious land of true liberty ever forget itself sufficiently as to adopt that suicidal policy.

Following is an extract from an article in the "Contemporary Review" (London, Eng.), January, 1911, by a well-known American writer on political economy, Mr. Frank Foxcroft (Boston):

> "It is to be observed, too, that under this system (Initiative and Referendum) the conservatives are always at a disadvantage. The dice are loaded against them. The vari-

> ous groups, the Socialists, the single-taxers, the woman suffragists and the rest will sign each other's petitions and get their different propositions before the people. When the campaign opens the radicals are already organized. They know what they want, and they will co-operate energetically to secure it. But the conservatives are handicapped. It is always harder to organize the negative than the affirmative."

There is a tremendous political truth in the latter observation. Not only is the Initiative and Referendum a game of "loaded dice" against the unorganized majority, but it is a cruel handicap and an eternal danger to unorganized minorities, who are dumb and helpless against others of their fellow-citizens who are organized, and are possibly not as considerate of the rights of others as they ought to be. One of the glorious advantages of the Representative system is that it tends to protect the rights of the otherwise helpless minorities. No system of government is truly democratic which does not do that.

### "THE MADNESS OF DEMOCRACY."

At the Dinner of the Army of the Tennessee, at Council Bluffs, Iowa, October 11, 1911, Arch-

bishop Ireland severely condemned the Initiative, Referendum and Recall. Among other things he said:

> "The clamor now is heard that the organization of American Democracy, such as the Republic has known for a century and a quarter, must be altered, torn asunder, under the pretense that with it the people do not govern with sufficient directness. Let us hope that the clamor is but a passing ebullition of feeling.
>
> "Democracy, yes; Mobocracy, never. And toward Mobocracy we are now bidden to wend our way. The shibboleths of the clamor, the Initiative, the Referendum, the Recall, put into general practice, as the evangelists of the new social gospel would fain have them, are nothing more nor less than the madness of Democracy."

Cardinal Gibbons is equally emphatic. In a sermon delivered at Baltimore, Sunday, October 1, 1911, he said: "To give to the masses the right of annulling the Acts of the Legislature is to substitute Mob Law for established Law."

### "TAXATION WITHOUT REPRESENTATION."

Writing from France, to Madison, December 20, 1787, Thomas Jefferson spoke of "the good

of preserving inviolate the fundamental principle that the people are not to be taxed, but by representatives chosen immediately by themselves." The Initiative and Referendum would abolish this "fundamental principle," and would place the tremendous power of taxation — the highest power any State can exercise, next only to that of imprisonment or inflicting the death penalty — in the hands of selfish groups and classes of organized minorities. While it is right and proper that communities should vote upon specific propositions imposing special taxation, after they have been thrashed out and formulated by some representative body, the case is immensely different under the purpose of the proposed State-wide Initiative and Referendum. In practical effect the latter would be "taxation without representation," because the tax would be formulated in secret by some minority group, and then — possibly included with a number of other befuddling propositions — submitted on a Referendum, which experience shows would only arouse the interest of a minority. The property of the tax-paying citizens would thus be at the mercy of any minority who desired to "shift" the burden of taxes on shoulders other than their own. This consideration alone ought to be sufficient to bury the Initiative and Referendum beneath an avalanche of votes when the people of

the State get a chance at the system in concrete form.

### MEANS CRUDE LEGISLATION.

Advocates of the Initiative and Referendum are compelled to recognize the force of the objection that crude measures are sure to be submitted to the people under their system. It is now suggested that the Legislature should have power to amend crude measures adopted by the people under the Initiative. This certainly would be desirable should the Initiative unfortunately become established in our system of legislation; but it is a confession that Direct Legislation, while possibly all right as an abstract theory, is impracticable as a system of actual legislation. There is also this serious objection to the suggested compromise: In its very essence Direct Legislation is a proclamation that the people do not trust the Legislature; it is therefore reasonable to assume that Legislators would take but little interest in bills submitted to them under the Initiative, particularly when they would have to be referred back to the people for adoption; the probable consequence, therefore, would be that the Legislators would be inclined to wash their hands of the entire matter, and let the bills pass even with conceded defects. First, there would be general indiffer-

ence because of lack of direct responsibility; and secondly the Legislators would take rather a cynical pleasure in demonstrating that the people *en masse* are incapable of legislating properly. While these controlling influences are not to be commended, they are quite in line with the influences controlling human nature; — and no legislation or system of government in the world has yet succeeded in killing human nature.

One of the strongest objections is that under the Initiative, measures must be accepted or rejected in their entirety. Under the Representative system, it is very seldom that a bill is passed in the exact form in which it is introduced, — even though it be drawn up by an experienced legislator. It is scrutinized by a committee in each branch, and then has to be read and debated by the members of both branches. Finally, it has to run the gauntlet of the Governor's veto. But under the Oregon plan every measure must be submitted exactly in the form in which it is on the petition. Even though the substance of the bill might be worthy, yet the form of the bill might be defective; or it is quite likely that while part of the bill might be advisable to enact, other portions might be highly objectionable. But the genuine Initiative bill must go to the people without the change of a word, and be voted upon with all its original imperfections. "Let the people

rule!" To give opportunities for needed amendments is an interference with that divine right!

The New York "Nation," — one of the ablest and most independent journals in America — said September 21, 1911:

> "The heart of the issue lies in the question whether in the long run the initiative-referendum system will sap the vitality of representative government; whether it will result in turning over all really vital questions to the decision of a mere numerical majority at the polls — in a state of things in which a momentous change like the introduction of prohibition or the free coinage of silver may be effected in a moment, without the interposition of any chance for the assertion, by representative men, of those intellectual and moral powers which have hitherto been regarded as an essential part of the forces that shape our political destinies."

## THE JOSEPH FELS FUND COMMISSION.

> NOTE. — The writer wishes it distinctly understood that in giving the following facts he does not intend to cast any personal reflection upon Mr. Joseph Fels or upon the gentlemen who compose the Commission which manages the fund established for the purpose of "putting the Land Value

Tax into effect somewhere in the United States within five years;" — and as to the talented corps of political organizers and orators working under the instructions of the Commission, they cannot be criticised for the part they play. Neither does the writer take any position — for or against — with regard to the Henry George theory of Land Tax Value. He believes, however, that the people of the country should clearly understand what has put new life into the Single-Tax movement in America, and what is the propulsive force back of the agitation for the Initiative and Referendum, and the reasons therefor.

Some of the facts given below have been denied in public debate by one of the leading Single-Tax enthusiasts, who was largely instrumental in securing delegates to the Ohio State Constitutional Convention pledged to the Initiative and Referendum. Hence the preciseness of detail in quotations from an official authoritative source which cannot be challenged. The pages indicated below refer to the Report of the Single Tax Conference, held at New York, November 19-20, 1910, under the auspices of the Fels Fund Commission.)

While Socialism, ever since the days of the old European "International," has always frankly declared for the Initiative and Referendum, as a means to accomplish its purposes, the propulsive force back of the present movement in the United States is that which is furnished by the Single Taxers, with the financial backing of a rather unique character, Mr. Joseph Fels, a millionaire soap maker, of London, England. It is a matter of common knowledge that the Single Tax movement was as dead as a salt mackerel until the last few years; but a remarkable resurrection and revivification of the almost forgotten cult has taken place; and the miracle has been effected by the stream of gold the fountain head of which is the rather blunt and frank, but very generous millionaire soap maker, Mr. Joseph Fels, of London. And "Eureka!"—the way has been discovered by which the erstwhile academic doctrines of Henry George, held by but a handful of devotees, can be forced on the majority, namely, through the Initiative and Referendum.

### "MUM'S THE WORD!"

There is an organization of National scope called the Fels Fund Commission, the officially declared object of which is "not to propagandize the country, but to put the Land Value Tax into

effect somewhere in the United States within five years — and that requires votes, which cannot be got without political action." (Page 13, Report of Single Tax Conference, held in New York, Nov. 19 and 20, 1910.) A careful reading of the official Report of the Fels Fund Commission and of the speeches made at the small but important Conference of Single Taxers held in 1910, clearly shows that there is much significance to be attached to the declaration that the Commission's activities lay not in propagandizing the country, but in political work. The political work referred to is aiding the movement for the Initiative and Referendum throughout the country, as the best means of securing the Single Tax. Mr. Jackson H. Ralston, of Washington, D. C., said at the Conference: "As for Direct Legislation, it bears to Single Tax as close a relation as a lock does to the door." (P. 17.) Mr. Lincoln Steffens, the well-known writer and Single Taxer, was frank enough to confess: "They knew what they wanted and went to work to get it without making any unnecessary noise about it." (P. 21.) Mr. W. S. U'Ren, the man who won Oregon for the Initiative and Referendum, and through it has "cleared the way" for the Single Tax, — incidentally against the will of the majority of the people of Oregon—is also delightfully frank, in the privacy of the Conference. (P. 21.)

Some of the old-line orthodox Single Taxers — those who believe in a straight-out fight for principles — do not approve of the methods of the Fels Fund Commission. The Report of the Conference says (P. 10): "Some criticism has been made of the Commission's expenditure of money for the Initiative and Referendum." A number of letters of criticism were read, but the late Tom L. Johnson, of Cleveland, "endorsed the work done and the expenditures made outside of 'straight Single Tax propaganda.'" (P. 17.) One critic, Mr. E. L. Heydecker, of New York, was bold enough to openly oppose the Initiative and Referendum. (P. 19.) The editor of the "Single Tax Review", feared "entangling alliances, also the danger of diverting our own propagandists to Direct Legislation rather than to our own great principle." He quoted Mr. Fels in support of his contention that the clear agitation for the taxation of land values would bring about Direct Legislation quicker than anything else." (P. 19-20.) Mr. Fels admitted this, but he was willing to leave the matter of methods to the Commission; and he said: "I now offer to duplicate every dollar that these gentlemen will raise for any work they want to do in their own way, and I don't expect any takers on that proposition." (P. 20.) (This offer, it should be borne

in mind, was in addition to his other munificent contributions to the Commission.)

The "Public" of Chicago is an official organ of the Single Taxers, and is subsidized by the Fels Fund Commission. There are three items recorded in the Report of monies received by and in behalf of the "Public" from the Fels Fund:— one of $2,437.80, by Emil Schmied, for "exploitation of 'Public,' " Jan. 1 to October 31, 1910 (p. 31); the second, of $1,494.10 to "sustention fund," (p. 34); the third, of $1,434.73 (p. 34); — making a total of $5,366.63 for 1909-10. On July 28, 1911, the "Public" confessed that Single Taxers "realize that it is by means of the Initiative and Referendum, and only so, that the work of Henry George can be consummated."

### MONEY GALORE.

In the Initiative - Referendum - Single - Tax campaign in Oregon up to December 1, 1910, the Fels Fund Commission spent $16,775. (P. 3.) "It was unanimously agreed that the appropriation for the work in Oregon from December 1, 1910, to November 30, 1911, be $12,000." (P. 26.)

In 1910 the Initiative and Referendum campaign in Missouri was "assisted" to the extent of $800. (P. 3.)

"The cost of the Rhode Island campaign to December 1, 1910," under Mr. John Z. White,

of Chicago, (the same gentleman who has been in Ohio), was $1,514.93. (P. 4.) Mr. White was in New Mexico, "with a successful result;" also in Arizona and Colorado. "Arrangements were made with John Z. White by which his contract with the Commission is extended at least another year from July 1, 1911, with the hope that the contract may be made permanent, co-equal with the life of the Commission." (P. 27.) On page 27 there is also this significant item: "Fred C. Howe and Bolton Hall were appointed to take up with Mr. Byron Holt a suggestion he made to Mr. Joseph Fels to furnish speakers for Granges on Land Value Taxation, and if their enquiry should prompt a recommendation of Mr. Holt's plan, their advice was to be considered the advice of the Commission." In this connection it is worth recalling that at the National Convention of Granges held at Columbus, O., in November, 1911, although several enthusiasts were present from the West in behalf of the Initiative and Referendum and the Single Tax, neither of these propositions was endorsed.

Contributions totalling $1,391.28 were made to the work in Arizona, Colorado and New Mexico; and $282.32 to that in Arkansas. (P. 4.)

Among the receipts by the Commission in 1909-10 was a donation of $5,000 from Mr. Joseph Fels to Bolton Hall, of New York; and

another of $30,000 from the same gentleman to the late Mr. Tom L. Johnson, of Cleveland, O. (P. 30.)

Under the head of "general activities," there is an item of the disbursement by Mr. Johnson of $3,295.42 to the "Ohio Direct Legislation League." (P. 31.) There is a paragraph on page 4 which explains that this amount was spent for the Initiative and Referendum movement in Ohio in 1909, "with barren results as far as legislative action was concerned." Who got this money? For what purpose was it used? These are legitimate questions.

Referring to his munificent contributions to the Single Tax movement, Mr. Fels spoke indifferently of them, as if it was only a small matter to him, and with magnificent contempt he exclaimed—so reads the official report—"Damn the money!" (P. 13) It seems, according to Mr. Fels' admission, that it was Mr. Daniel Kiefer, of Cincinnati, who first interested him in the Single-Tax movement. Mr. Fels tells with simple naivete that it was Mr. Kiefer's "knowledge of what we wanted and how to get it that brought Mr. Fels under his influence." (P. 16.) Mr. Kiefer is Chairman of the Commission. During the Conference he was praised as "a national money raiser." (P. 16.)

In a supplementary statement issued by the Commission (undated) to subscribers, the information is given that Mr. Joseph Fels is giving $25,000 a year to the Commission and that he "offers to give $50,000 or $100,000 a year, and even more, if the Single Taxers of the United States will contribute that amount." The condition has been met. On November 25, 1911, the Cincinnati "Enquirer" published a telegraphic news item from Chicago, in reference to a meeting of the Single Tax advocates and the Fels Fund Commission; and it said: "According to the terms of the Joseph Fels Fund, all money raised for five years for the purpose of testing the Single Tax plan will be duplicated from the fund. Chairman Daniel Kiefer, of Cincinnati, announced that about $100,000 already had been raised." As Mr. Fels has agreed to duplicate the contributions, dollar for dollar, he will give another $100,000, making a total of at least $200,000 available for the Initiative-Referendum-Single-Tax campaign of 1912.

### THE STANDARD AMERICAN AUTHORITY.

"The Referendum in America" is the standard work on the subject. Its author is Prof. Ellis Paxson Oberholtzer, of the University of Pennsylvania. After giving an exhaustive history of Direct Legislation in America, and critic-

ally examining its operations and effects, he comes to this conclusion (Edition of 1900):

> "* * * Though the evils of the representative system are admittedly great the fact must be kept in mind that direct legislation by the people is also attended by abuses of a very serious kind. So far as our experience has already gone in the United States a number of glaring defects have been exhibited by the people in their role as law-makers. The most impressive of these is their strange apathy even in the face of great issues. They as a mass have so little interest in legislative subjects that only a small percentage will attend the polls for special elections and at general elections when individual candidates are to be chosen, though the propositions be printed on the same ballots with the names of the candidates, a large proportion of the voters will not put themselves to the slight trouble of placing a pencil mark under the word "yes" or "no." The conclusion is unavoidable that the people considered as a body do not know anything, nor do they care anything about the merits or demerits of a particular law. They may know little in the opinion of most of us about the respective merits of candi-

> dates for representative offices. For one reason or another, the people still have enough interest in this subject to record their preferences. It is true that the largest possible vote is never polled for candidates, but, speaking roughly, twice as many electors vote for individuals as vote for measures. Furthermore, very strange popular idiosyncrasies are developed at elections on propositions. When several are submitted at the same time all are likely to be defeated, or else all adopted. There seems to be little capacity for discrimination. Again very radical measures and many indeed of dangerous tendencies are not always rejected by the people, or if they are there are not a few cases in which this result seems to have been brought about by accident rather than by serious moral purpose. It is easy to see on a most cursory examination that under such circumstances the people are very far from being an ideal body of law-makers."

There has been issued a new and revised edition of "The Referendum in America," by Dr. Oberholtzer, dated August, 1911. In the preface to this edition, the author makes a dignified protest against his work being "quoted as favorable to a system of direct government in

America." In supplementary chapters covering the years from 1900 to 1911 he makes himself clear that he is decidedly opposed to the new-fangled Initiative, Referendum and Recall, as the following excerpts will show:

He speaks of the movement in Oregon as a "current of folly," a checking of which, he notes, is indicated by the vote on the 32 propositions in 1910. In introducing his statement of the Recall he says: "To complete the work of destruction which the direct government agitators have in hand, nothing was needed but the right to organize a party to turn duly designated officials out of place and to set up others in their stead. * * * If the legislature is to go, then, why not the Governor and the courts also?" "In Oregon," he says, further on, "where all is fluid and the perfectionists are at work endeavoring to make themselves the citizens of a new Arcadia, the use of the recall is becoming frequent." Again referring to Oregon, Prof. Oberholtzer directs attention to the fact that "any charlatan, if he can obtain enough signers to his petition, can bring forward a plan for changing the Constitution. * * * The tinker is always busy, and the fruit of his activity is a deranged body of provisions—a confused, inconsistent code which bears no relation, except in the extremes of its

variance, to the Constitution of a more estimable period in American history."

In South Dakota—according to the statement of the Governor of that State—ten cents a name are paid to signers to a Referendum Petition, but it seems, that "in Portland (Ore.) there is an organization which contracts to provide signatures to initiative and referendum petitions at regular published rates—three to five cents per name."

Minority Rule under the Initiative and Referendum is thus stated by Prof. Oberholtzer:

> "The defence is properly set up for a representative form of government with a division of powers, that it protects the rights of minorities. The majority of the people may not directly attack the interests of the minority. Yet in the use of the initiative, the referendum and the recall what is seen? The minority often absolutely controls the majority. Indeed it seems to be assumed that this is their right."

As to the effect of the Initiative and Referendum and the Recall on public officers, and the Legislature, as contrasted with the results of our Representative system, he says:

> "Men like Washington and Lincoln, Daniel Webster, Henry Clay and John C. Calhoun, were not the products of any political system in which bodies of mediocre men with hobbies robbed the legislature of its dignity and authority, and subjected executive, legislative and judicial officers to the fear of recall when they pursued a course distasteful to some fraction of the electorate. Only timid, shambling, ineffective men can come out of a system which strips public office of character and authority and makes it directly subservient to popular whim."

And the concluding sentences of this new edition of the "Referendum in America" are a combined condemnation and prophecy:

> "It (direct legislation) is in conflict with the spirit and traditions of our political system, as will soon be perceived by growing numbers of men. While the people are subject to sudden impulse and at times commit the most serious mistakes they have seldom erred through years in the long run on the question of great fundamental principles. When they come to understand the purposes of these 'reforms', and can see beyond the present to the end, it is safe to

> predict that there will be a readjustment of opinion as radical as the movement by which our standards have been so ruthlessly deranged."

### HON. JAMES BRYCE ON DIRECT LEGISLATION.

Hon. James Bryce, the British Ambassador to the United States, has a very interesting chapter in his incomparable work, "The American Commonwealth," on Direct Legislation. He notes the tendencies of the American people to distrust their Legislatures, and "to seize such chances as occurred of making laws for themselves in their own way;" and he adds: "Concurrently with the growth of these tendencies there had been a decline in the quality of the State legislature, and of the legislation which they turned out." According to Mr. Bryce, each of these tendencies re-acted upon the other. He proceeds to say:

> "What are the practical advantages of this plan of direct legislation by the people? Its demerits are obvious. Besides those I have already stated, it tends to lower the authority and sense of responsibility in the legislature; and it refers matters needing much elucidation by debate to the determination of those who cannot, on account of their numbers,

> meet together for discussion, and many of whom have never thought about the matter. These considerations will to most Europeans appear decisive against it. The proper course, they will say, is to improve the legislatures. The less you trust them, the worse they will be. They may be ignorant; yet not so ignorant as the masses." — (P. 453, 2nd ed. Am. Com.)

Mr. Bryce goes on to say that he regards the Referendum—as it then existed—"as being rather a bit and bridle than a spur" on the Legislature; and he concludes by saying that the system, "liable as it doubtless is to abuse, causes in the present condition of the States, fewer evils than it prevents."

Because of these conclusions by Mr. Bryce as to the operation of a very qualified form of the Referendum, it is sometimes claimed by reckless enthusiasts that he has given the authority of his great name in favor of the Initiative and Referendum as now operated, say in Oregon. This claim has no warrant. What Mr. Bryce was referring to was not the new Initiative and Referendum at all, but the historic American system of referring to the people Constitutional Amendments and Statutory Acts which had been duly scrutinized, debated and passed with all the tra-

ditionary safeguards, either by a Convention or a Legislature. He could not have referred to the Initiative in any way. The second edition of the "American Commonwealth,"—from which the above extracts are taken—was published in 1889. The first State to adopt the Initiative was South Dakota; that was not until 1898, and it only applied to Statute Laws. The first State to apply the Initiative to Constitutional Amendments was Oregon, and that was not until 1902.

In the new edition (1910) of the "American Commonwealth," Mr. Bryce maintains his former cautiousness as to expressing any definite opinion on the subject,—but what he does say must be considered adverse. After remarking upon the inconclusiveness of the results of the American experiments, he goes on to say: "Nor does the experience of Switzerland furnish much guidance, so dissimilar are the social conditions and the political habits of the two nations." Of the Referendum, he says that it is "troublesome and costly to take the votes of millions of people." Speaking of the lack of responsibility and authority on the part of American State Legislatures, he observes, in this last edition: "The Initiative is a supersession of the Legislature which tends even more to reduce its authority." (P. 479.) He urges that further

time and tests must be had before judgment can be pronounced as to the working of these new expedients; and he prints prominently this very significant special Note to the Edition of 1910 on "Recent Tendencies in State Politics," he referring to the disposition of Americans to blame and to be impatient with their Legislatures:

> "Such impatience is not always justified, for the masses sometimes expect from legislation benefits which no legislation can give and blame their representatives when the fault lies not in the latter but in the nature of things. But the people will in trying to do themselves the work they desire to have done doubtless come to learn in time how much harder that work is than they had believed, and how much more skill it needs than either they or their legislators have yet acquired."

### WOODROW WILSON AND THE I. & R.*

Prof. Woodrow Wilson, speaking as President of Princeton University, at the annual meeting of the Civic League of St. Louis, Mo., March 9, 1909, said:

> "You know we have heard a great deal recently about the government of

*It is fair to Professor Wilson to say that the newspapers report that he has recently changed his opinion.

the country by the people of the country, and I must say that it seems to me we have been talking a great deal of nonsense. A government can be democratic only in the sense that it is a government restrained, controlled by public opinion. It can never be a government conducted by public opinion. What I mean to say is this: that POPULAR INITIATIVE IS AN INCONCEIVABLE THING!

"* * * You say that your legislatures do not represent you — and sometimes, I dare say, they do not, though I think they are generally just as good as you deserve — and therefore, you say, let us directly vote upon the measures which they vote upon. Do you not see that this is simply adding another piece of machinery which, after you cease to be interested in it, is going to be used by the same set of persons for the same objects? If you do not see it, you will see it after you have tried it awhile."

(The above speech is reprinted in full in Cong. Record, August 19, 1911.)

Prof. Woodrow Wilson has also committed himself unequivocally in writing to condemnation of the Initiative and Referendum. In "The State" (Rev. ed., 1898, pp. 311, 313) and in

"Constitutional Government in the United States" (pp. 104, 188-191) this learned authority said:

> "The vote upon most measures submitted to the ballot is usually very light; there is not popular discussion, and the referendum by no means creates that quick interest in affairs which its originators had hoped to see it excite. It has dulled the sense of responsibility among legislators without, in fact, quickening the people to the exercise of any real control in affairs. * * * Where it (the Initiative) has been employed it has not promised either progress or enlightenment, leading rather to doubtful experiments and to reactionary displays of prejudice than to really useful legislation. * * * A government must have organs; it cannot act inorganically by masses. It must have a law-making body; it can no more make laws through its voters than it can make law through its newspapers." (Quoted in the 1911 edition of Oberholtzer's "Referendum in America.")

### TWO GREAT FALLACIES.

There are two great fallacies underlying the theory of the Initiative and Referendum:—

(1) That a community which, through in-

difference, incompetency, or corruption, fails to elect honest and capable Legislative Representatives, will wisely perform the infinitely more complex and delicate function of passing Laws directly.

(2) That the necessity for Laws being skillfully drawn, carefully scrutinized, and thoroughly debated, considered and formulated, before being presented for passage, can be ignored.

From these fallacies follow the inevitable evils which condemn the system as being unsound and even vicious, both logically and as the results of actual experience.

# Switzerland's Experience.

"CIRCUMSTANCES ALTER CASES."

Another fallacy of the advocates of Direct Legislation is the assumption that what might suit one community under certain conditions and surrounded by certain environments, would necessarily suit all other communities. "Sam Slick's" Old Judge never gave utterance to a more profound dictum than that "circumstances alter cases." But the Initiative-Referendumites ignore this universal judicial and political experience. They say: The Initiative and Referendum is a success in Switzerland; — atlhough (speaking in a merely incidental manner), it is not — therefore it would be a success in America. That does not necessarily follow. But —

In the first place, the alleged success of the Initiative and Referendum in Switzerland is a very open question at the best. In the past, the simple Referendum, under conditions which then existed, and in the absence of any historic training in the Representative system as we understand it in America, has undoubtedly served a satisfactory purpose in securing a popular demo-

cratic government. But social and economic conditions are now changing in Switzerland, as elsewhere, and it is now being found that the Referendum is no longer as beneficially effective as it was when the simple-minded graziers and small peasant proprietors held the government of the Republic in the hollow of their hands.

As to the Initiative — nothing good can be said of it. The experience with the Federal Initiative during the score of years it has been in operation has not only been disappointing and unsatisfactory, but it has caused grave fears in the minds of some of the most enlightened and patriotic statesmen of Switzerland that it may cause the destruction of the Republic as a well-governed and orderly democracy.

But even though the Initiative and Referendum were a success in Switzerland, — which it is not — that would not be proof that it is adapted to America, with its entirely different history and traditions, its different geographical, social, economic, commercial and political conditions, — and also its very different system of government, notwithstanding the fact that both countries are Republics.

### PROF. OBERHOLTZER'S WARNING.

In concluding his masterly work, "The Referendum in America," Prof. Oberholtzer

utters this warning against looking to Switzerland or any other foreign country for political experiments, instead of to our own history and experience, — and he is speaking with special reference to the Initiative and Referendum:

> "* * * Not until we are convinced that the evils which have developed in our political life, and which are putting the virtue of our civil institutions to so sore a test, are induced by the system rather than by the inherent shortcomings of men in democracies, should we be willing to turn from the course which history and experience have marked out for us. To inject into our heritage to-day, principles and political forms which trace another lineage, would result no more happily than the French effort at the end of the eighteenth century to discard history, and lay the foundations of the future on strange lines. Every empirical sentiment, and all the teachings of modern science, combine to bring home to reasoning men this one great fact which will live as long as the world lasts and human government endures."

### WHY SWITZERLAND ADOPTED THE I. & R.

Prof. A. Lawrence Lowell, President of Harvard University, is recognized in Europe as

in this country as one of the leading and most trustworthy of American authorities on foreign governments and political parties. In his "Governments and Parties in Continental Europe" he explains how the Initiative and Referendum became fixed in the governmental system of Switzerland. He says it was because of the lack of a native representative system. It is curious that in Switzerland, almost alone among the countries north of the Alps, representative government did not rise spontaneously. The delegates to the Diet of the Old Confederation were not representatives, but were like ambassadors, and they could not finally decide questions, but had to report to their States. The delegates were commissioned simply to hear propositions, and to take them "ad referendum," that is, they had to refer them to their Cantonal authorities, and report the opinion of the latter on the matter to the next session of the Diet, unless the Canton instructed its deputies to take it again "ad referendum." The modern form is different, but Prof. Lowell says that the real foundation of the belief in the right of the people to take a direct part in legislation, lay in the defective condition of the representative system. Nor is this surprising. Up to the end of the last century the Swiss had no experience of representative government. The result

was that when representative institutions were copied from other countries after the French Revolution, the Swiss were not accustomed to them, and met with two difficulties. In the first place, they did not know how to provide the necessary checks and balances, and they set up single chambers with absolute powers; and, in the second place, they had not learned to make those chambers reflect public opinion.

### PROF. LOWELL'S ADVERSE OPINION.

While Prof. Lowell gives a guarded approval of the Referendum under Swiss conditions, he emphatically condemns the Initiative even in that country. He says: "The Initiative has not been established in the Confederation a sufficient length of time to test its real importance, but it has not been found effective even for ordinary laws, in the Cantons where it has long existed. * * * It is certain that the new Federal Initiative in its actual form has been the cause of great anxiety."

After a most exhaustive study and examination, Prof. Lowell comes to the conclusion that the Initiative in practice "has not proved of value. * * * The conception is bold, but it is not likely to be of any great use to mankind; if indeed, it does not prove to be merely a happy hunting-ground for extremists and fanatics."

As to the use of the Referendum and Initiative in America, Prof. Lowell says that the Referendum applied to ordinary statutes is inconsistent with our polity, and could not be engrafted without altering its very nature. "The Referendum in America would impose on the voters a far more difficult task than it does in Switzerland. * * * The Initiative has not been a success even in Switzerland, and there is no reason to suppose it would work better elsewhere."

### HOW SWITZERLAND DIFFERS FROM THE U. S.

On April 14, 1911, the American Minister to Switzerland, Hon. Lauritz S. Swenson, wrote a most informative letter to the Hon. James A. Tawney, of Minnesota, descriptive of the conditions in Switzerland, and explanatory of the workings of the Initiative and Referendum in that country. (Republished in the Cong. Record, Aug. 19, 1911.) He thus shows the great difference between the Swiss and the American systems of government:

> "It is important to bear in mind that the national legislature elects the Federal Executive (the President) as well as the Federal judiciary, and that no veto power can be exercised by the Executive, nor can any judicial power question the constitution-

ality of its statutes. The Executive, not being elected by the people, cannot as their direct representative be expected to counterbalance the power of the legislature, which elects him. Only by means of the referendum, or 'people's veto,' can a negative be interposed. This is the situation also in the Cantons."

"Conditions in Switzerland differ widely from ours socially, commercially, industrially, politically, and geographically. Here is an established society extending back over hundreds of years. Institutions are more stable, and the people are more conservative and cautious by training and tradition. The population is largely composed of rural freeholders, and there is not a continuous influx of immigrants of all kinds who in short order become voters. Naturalization is not easily acquired in Switzerland. To become a citizen of the Confederation a foreigner must be admitted to citizenship in the commune and the Canton. The communes possess property, the proceeds from which are distributed in some way or other among its citizens. An applicant for the privilege of becoming a 'burger' must accordingly pay for it — in most cases quite a respectable amount. He then feels that he

has a property interest in the community, and will naturally help to safe-guard it against any radical interference. * * * Political questions are less complex, and the voters have closer personal knowledge of the conditions under discussion, owing to the smallness of the country. The voters are, as a rule, more conservative than their legislators.

"Switzerland has a government for a simple people and a small country. The population of Switzerland is ca. 3,800,000. Its area is about 16,000 square miles; that of Minnesota ca. 83,000 square miles."

### MINISTER SWENSON POINTS OUT DRAWBACKS.

Minister Swenson points out the serious drawbacks to the Initiative and Referendum in 'the most democratic country in Europe" and the one country in the world where it ought to be a success if it could be anywhere. He goes on to say:

"Notwithstanding the apparently favorable conditions under which the Swiss initiative and referendum have operated, the practical workings of the system have brought out many drawbacks.

"It is said to be the weapon in the hands of the minority to keep up a

constant political agitation; and owing to the large abstention from voting, it is not the people, but a relatively small part of the electoral body that rejects or enacts a law. A majority of the legislature, representing a majority of the electors, may pass a law, and a minority of the voters may, on a referendum, defeat the expressed will of the majority. And the people will time and again reelect the lawmakers whose measures they have thus rejected—and repeat the performance of setting their work aside by a decided minority vote. In some communes it has happened that only 19, 14, and as low as 10 per cent of the voters have participated in a referendum election. * * *

"* * * It is urged against the system under discussion that it is an appeal from calm deliberation to prejudice, and spasmodic, artificial sentiment. Also that the people have not the facilities, leisure, or will to study legislation as a legislative body of competent persons does. Then, too, it lessens the sense of responsibility on the part of the legislator."

### COMPULSORY VOTING IN SWITZERLAND.

As everywhere else, the Initiative and Referendum means in Switzerland the Rule of the

Minority. It has been suggested in America that to make the people vote on propositions, voting should be made compulsory. This has been tried in Switzerland, but it has not been successful: from 20 to 30 per cent of the voters cast blank ballots. The following is from an official report to the State Department from the American Vice-Consul at Berne (Switzerland), Leo. J. Frankenthal, in 1908, and presented to the Senate by Mr. La Follette, and printed as Sen. Doc. 126, 61st Cong., 1st Sess.:

> "Voting is obligatory on Cantonal matters in the Cantons Zurich, Schaffhausen, St. Gallen, Aargan, and Thurgau. These Cantons show average votes of from 70 to 80 per cent; but the obligatory measure is not rigorously enforced. Small fines are imposed upon people failing to vote unless an adequate excuse is made. This includes illness in the family, mourning for a relative, absence, birth in the family, etc. St. Gallen goes further than its neighbors and excuses the parent and god-parent from the duty of voting if their presence is necessary at a Christening. * * * There is considerable objection in many parts of Switzerland to obligatory voting. * * * You may force a voter to the polling place,

> but you cannot prevent him from casting a blank or a mutilated ballot. This refers, naturally, to referendum measures and not to the election of persons. Let us refer to the statistics of the Canton of Zurich, which is the most populous of those in which obligatory voting is in force. Of recent laws voted upon in this Canton in the last few years the following figures are taken at random: 1906, law concerning a change in certain communal boundaries, 10,744 blank or mutilated ballots out of 59,538; law concerning the right of voting. number of inhabitants in electoral districts, etc., 11,380 blank or mutilated ballots out of 75,-504; law concerning protection of game, 5,374 blank or mutilated ballots out of 71,933. . . . There is no question but what the Swiss in general are fatigued by the frequency with which they are called to vote."

E. V. Raynolds, in an article in the "Yale Review," November, 1895, on "Referendum and Other Forms of Direct Democracy in Switzerland," says:

> "Many cantons declare voting a duty, and some back up the declaration by fining those who fail in this duty. In Zurich this is regulated by the Communes, so that some of the

> citizens are free to remain away from the polls, while others abstain at their peril. One result of the compulsory law is seen in the large proportion of blank ballots cast. In Zurich it is often the case that more than twenty per cent., and sometimes more than thirty per cent., of the ballots are blank."

The truth is that the Swiss people are weary of their many elections under the Initiative and Referendum. There is a saying in Switzerland that the polling-booths are open as often as the churches. Were it not for the smallness of the country and the peculiar social and economic conditions, demoralization or the dry-rot would result from the Direct system of government.

The London "Spectator," of August 25, 1894, in an article on "Swiss Referendum and the People's Will," said:

> "Weighed by its results, the 'right of initiative' has still to justify its existence. True, it enables fifty thousand well meaning voters to propose a new law for the consideration of their fellow-citizens; it also enables faddists and fanatics who by hook or crook can collect the needful signatures, to advertise their schemes and theories at the public expense. . . .

> Moreover, the multiplication of elections and 'votations' is a serious evil. * * * The oftener people are required to vote the less disposed they seem to profit by the privilege."

Compulsory voting failing to bring out the people, a new scheme is being tried. M. W. Hazeltine, in an article in the "North American Review", May 17, 1907, says:

> "In two of the cantons an effort has been made to bring about serious discussion by providing that, when citizens meet at the polls, a debate shall take place before the voting begins. It is noticed, however, that when the presiding officer asks if any one wishes to speak, no one ever responds. In other words, you can bring a horse to the water, but you can't make him drink."
>
> " * * * Even in the cantons, where it has long existed, and is applicable even to ordinary laws, it has not been found effective.
>
> " * * * Certainly it has not yet developed much efficiency in Switzerland. * * * The conception of the initiative may be bold, but those who have observed the institution longest

and studied it most carefully pronounce it unlikely to be of any great use to mankind."

### WHAT A BELGIAN ECONOMIST SAYS.

Twenty years ago the Belgian Chamber (Parliament) considered the advisability of establishing the Swiss Initiative and Referendum, but, after investigation and deliberation, declined to adopt it. The most authoritative Belgian work on the subject is by Prof. Simon Deploige, who in 1892 published the results of his personal observations of the working of the Referendum in Switzerland. He states it as a fact that it is the Parliamentary Opposition which wants the Referendum in Switzerland; "the Majority, on the contrary, whatever its political complexion, wishes to be rid of it." He quotes a prominent member of the Swiss Parliament, M. Zemp, as saying: "I should like to see the Referendum completely suppressed, and above all, I want no compulsory Referendum. As to the popular Initiative, I dread it as a sort of legislative dynamite. In a word, the so-called rights of the people seem to me to be nothing more than democratic clap-trap."

In giving this quotation, Prof. Deploige says: "In less picturesque terms, most of the speakers of the majority (of the Swiss Parliament) expressed the same sentiments; and some

months after the discussion, M. Numas Droz (Ex-President of the Swiss Republic) re-echoed them in a long article in the "Revue Swisse." And further on the Belgian observer adds: "Droz is a most inveterate opponent of the popular Initiative."

Summing the matter up, Prof. Deploige says:

> "It is a little ridiculous to talk of legislation by the people when more than one-half the citizens refuse to exercise their legislative rights." Commenting on the compulsory voting system, and the consequent great number of blank ballots, M. Deploige says: "The experiment of the democrats cannot be said to have met with success. If they wish to avoid complete failure, they must do two things, and do them quickly. They must find a better method of direct legislation, and secondly they must confine the Referendum to a small number of votes" (measures). (P. 290.)

The final conclusion of M. Deploige as to the Swiss Referendum is that "its method is defective and its results questionable."

As to the Initiative, M. Deploige quotes a Swiss statesman, M. Borgeaud: "The evil is that in this case a law proceeds from powers that

are anonymous and irresponsible. * * * This law may be drawn up behind closed doors, or around the council board of some committee, who are then of as much importance as the regular government." M. Droz gives exactly the same objection to the Initiative.

Hon. Arthur Sherburne Hardy, ex-Minister of the United States to Switzerland, says, that "the experience of Switzerland cannot be made the argument for the adoption of the Referendum or Initiative in the United States is generally admitted by Continental students of the system."

M. Naville, a Swiss publicist, says that "the large number of abstentions proves that it is not the people, but a relatively small part of the electoral body which accepts or rejects a Law; and that it is ridiculous to suppose that each citizen can form a just and accurate opinion upon the Laws submitted to him."

In Switzerland if a measure is rejected it is sometimes initiated again; this is sometimes repeated by the partisans of the measure; then the people, becoming tired of resisting, will allow the measure to become a Law by default. One writer says that "the independent and conscientious voters of Switzerland who have not had time to examine the Laws usually refrain from voting." Yet the far-fetched claim is

made by the advocates of the Initiative and Referendum that non-voters are to be classed as having acquiesced in the result of the vote.

### THE INITIATIVE A FAILURE.

As to the working of the Initiative in Switzerland, we here give the testimony of Prof. W. Oechsli, of Zurich, Switzerland. This evidence is recent, it being taken from an article in the "Quarterly Review" (London), April, 1911. Prof. Oechsli confines his study to his own country, with its unique social, economic and political institutions, and he frankly speaks well of the Referendum as an instrument of popular government there. But he stoutly opposes the Initiative even for Switzerland. He says:

> "If our judgment of the Referendum is, on the whole, distinctly in its favor, practical experience of the popular Initiative, which is usually, though wrongly, coupled with it, points to a different conclusion. The Referendum is a right enjoyed by the whole people; the Initiative is a right of individuals or minorities. And it goes beyond mere liberty, for it enables a minority to put compulsion on a whole people, forcing it to occupy itself with proposals for which it has given no mandate. It is in the nature

> of things that the Initiative is chiefly used by persons who are either consumed by a passion for reforming the world or consider themselves inadequately represented by the Government."

Prof. Oechsli gives a number of Initiative measures, and he says that "most of the proposals thus submitted to the popular vote were of questionable utility." And he concludes with this emphatic indictment of the Initiative:

> "These meagre results of twenty years of Initiative were surely not worth the constant disturbance in which the would-be benefactors of both parties have kept the country. The really dangerous proposals have failed. But the fact that an institution has not as yet been able to do much damage is no reason for praising it. It has been rightly said that the Referendum signifies democracy, the Initiative demagogy. Fortunately, the Initiative finds its corrective in the Referendum, the individual will of groups in the common will of the people. If Switzerland is threatened by internal dangers, they will not come from the Referendum, but rather from the extravagant right of compulsion which the Initiative confers

> on the extremest minorities as against the majority of the nation."

### EX-PRESIDENT DROZ CONDEMNS THE INITIATIVE.

Probably the best-known public man of Switzerland is M. Numa Droz, ex-President of the Republic, and for twenty years a member of the Federal Council, the highest branch in the Swiss system of government. M. Droz is often quoted in favor of the Referendum; but those favorable views appear to have been considerably modified, and he has grave doubts as to the applicability of the Swiss system to countries under different conditions. As to the Initiative, he utterly condemns it. In the "Contemporary Review" (London), of November, 1895, M. Droz said:

> "It is now generally agreed that the popular initiative might at any time place the country in very considerable danger. From the moment that the regular representatives of the people have no more to say in the matter than an irresponsible committee drawing up articles in a bar parlor, it is clear that the limits of sound democracy have been passed and that the reign of demagogy has begun. The shaping of a wise constitution must always be a matter of weighing and balancing. It cannot be permit-

ted that the gravest decisions should be the work of impulse or surprise. The generally adopted system of two chambers and of two or three readings for every bill, is a recognition of this fact. It cannot be denied that the Swiss people have shown a want of wisdom in adopting a system of initiative which places all our institutions at the mercy of any daring attempt instigated by the demagogue, and favored by precisely such circumstances as should rather incline us to take time for reflection."

# The Muddle in Oregon.

A WARNING TO OTHER STATES.

Of course the Referendum as applied to Constitutions and certain Legislative Acts is a very old system in America; but Oregon has the doubtful distinction of being the first State to provide for the amendment of its Constitution through the Initiative. That was in 1902. Eight per cent of the voters can propose not only a Law but a Constitutional Amendment, and 5 per cent can demand a Referendum. In eight years the small clique of Single Taxers in combination with the Socialists and other bands of extremists and faddists, have succeeded in tying the Constitution of Oregon into a knot, necessitating the use of a judicial but autocratic knife to cut it. In other words, the Supreme Court itself has, it is claimed, been compelled to practically legislate, and to render dicta which are logically at variance with the doctrine of the "sovereignty of the people," so as to bring order out of chaos.

The combined vote — yea and nay — on the proposition to incorporate the Initiative and

Referendum into the Constitution was only 67,692 — 72 per cent of the total vote of the State. Owing to agitation on the Woman's Suffrage question — and there were organizations opposed to as well as in favor of female votes — and as to the liquor traffic, the vote was then and generally has been larger in Oregon on Initiative and Referendum propositions than in other States; but there are now indications that the people of Oregon are tiring of their political toy, and the tendency is to cast a smaller vote.

It is sometimes said that the people would rarely use the Initiative and Referendum. That all depends. In a State like South Dakota that might be true; in a State like Oregon, which is the paradise of organized cranks, intent on enforcing their crude minority ideas on an unappreciative majority, the experience is the other way. Oregon "went the whole hog" on the Initiative and Referendum in 1902; in 1904 only two propositions were submitted under it; in 1906 there were 11; in 1908 there were 19; in 1910 there were 32, besides 131 candidates for the unfortunate people of Oregon to vote for! It took a booklet of 202 pages, — not counting the index — to officially set forth the 32 propositions. It is said that some of the voters of Oregon have become so expert that they voted

on all the 32 propositions and the 131 candidates in exactly 2 1-2 minutes, by the watch!

### SINGLE TAXERS BACK OF IT.

The Single Taxers, led by that remarkable enthusiast, Mr. W. S. U'Ren, were the original promoters and are now the mainstay of the Initiative and Referendum in Oregon. The story of how Mr. U'Ren got the Initiative and Referendum engrafted onto the Constitution of Oregon has been often told by magazine writers. Following is his own account, taken from the official Report of the Single Tax Conference, held at New York, November 19-20, 1910, under the auspices of the Joseph Fels Commission, — pages 21 and 22:

> "Mr. W. S. U'Ren told of his experience as a Single Tax propagandist before he learned that mere propaganda is not the line of least resistance. 'I read "Progess and Poverty" in 1882,' he said, 'and I went just as crazy over the Single Tax idea as any one else ever did. I knew I wanted the Single Tax, and that was about all I did know. I thought I could get it by agitation. and was often disgusted with a world that refused to be agitated for what I wanted. In 1882 (sic) I learned what the Initiative and Referendum is, and then I saw

> the way to the Single Tax. SO I QUIT TALKING SINGLE TAX, not because I was any the less in favor of it but because I saw that the first job was to get the Initiative and Referendum, so that the people, independently of the Legislature, may get what they want rather than take what the Legislature will let them have. We have laid the foundation in Oregon, and our Legislature can not draw a dead line against the people.
>
> "'We have cleared the way for a straight Single Tax fight in Oregon. All the work we have done for Direct Legislation has been done with the Single Tax in view, but we have not talked Single Tax because that was not the question before the house.'"

In another speech at the Conference, Mr. U'Ren said, in explaining the methods adopted in Oregon by the Single Taxers: "We do not make speaking campaigns." In endorsing the work of the Fels Fund Commission for Direct Legislation, Mr. U'Ren "exhibited the Oregon ballot used at the November election (1910), on which were printed the names of more than one hundred candidates and 32 measures, and said that the time taken by the voters in voting on candidates and measures was from 2 1-2 to six minutes." (P. 14.)

The majority of the people of Oregon are opposed to the Single Tax. They have shown that by their votes. The first time was in 1908. In order to make the medicine agreeable to the taxpayers, wholesale exemptions were declared for, but the printed official affirmative argument confessed that "the proposed Amendment is a step in the direction of the Single Tax." For the Amendment there were cast 32,066 votes, and against it 60,871 — almost two to one against it. But the Single Taxers were not discouraged; they knew the potentialities of the Initiative and Referendum in enforcing the will of a determined, persistent, well-organized, and splendidly financed minority, on an unalert, unorganized majority, weary with constant political turmoil, and unwilling to bother about studying and discriminating between the numerous propositions submitted — 32 in this case, along with 131 candidates. What is known as the Amendment for "County Home Rule in Taxation," under which the Single Taxers expect to reach their goal, is the proposition on which the Single Taxers of Oregon united, under the adroit work of the Fels Fund Commission. The real object of this Amendment was obscured by dextrous phraseology — a recourse to which the Initiative and Referendum peculiarly lends itself. This Amendment was so drawn that it appeared as

if its primary object was to prohibit the imposition of a "poll or head tax." The first sentence read: "No poll or head tax shall be levied or collected in Oregon." As a matter of fact, there was no poll or head tax in the State, that having been abolished by the Legislature in 1907. At the end of the Amendment were these words: * * * "But the people of the several counties are hereby empowered and authorized to regulate taxation and exemptions within their several counties, subject to any general law which may be hereafter enacted," — of course, through the same old dodge of the Initiative and Referendum. It should be observed that there is not a word specifically about the Single Tax. Already one County — or rather a small minority of the voters — has initiated proceedings for the Single Tax under it; but here comes in one of the beautiful features of the Direct Legislation system: The Secretary of State of Oregon has felt it to be his sworn duty to refuse to file the Initiative petition on the ground that owing to legal defects the Amendment is not self-executing. The petitioners have brought mandamus proceedings to require this Initiative proposition to be placed on the ballot at the State election of 1912. This radical change in the taxing system of the State was fastened upon Oregon by a vote of 44,171 for, to 42,127

against — the majority being only 2,044. The total vote — for and against — was 72 per cent of the total vote of the State, and the affirmative vote was only 37 1-2 per cent of the vote cast for Governor at that election.

### STATE UNIVERSITY JEOPARDIZED.

In the last six years there have been three Referendum petitions filed against appropriations by the Legislature of Oregon for the State University. The first two petitions were defeated by a small majority at the election, but in each case the appropriations were held up for more than a year and a half, and the University would have been compelled to close its doors had not the professors agreed for the last six months preceding each of the elections to work without salary unless and until the appropriations became available. The amounts appropriated for the University were not large, — in the first instance only $62,500 a year for two years, and in the second case $125,000 a year for two years. At the time of writing this booklet, legal proceedings are pending contesting the validity of the third Referendum petition against the legislative appropriation. This petition was instituted by citizens of rival towns to that in which the institution is placed. These people are said to have employed a professional agitator

and circulator of Initiative and Referendum petitions at a price per name! The legal proceedings referred to are an equity suit, and a large amount of evidence has been taken by the court. It is asserted that it has been disclosed that there have been comparatively but few genuine signatures on the Referendum petitions; that it has been shown that the circulators of the petitions filled in several thousand names in their own handwriting, in some cases taking the names from old directories, and even signing the names of people who had been dead for several years!

### CRUDE AND CONFLICTING LAWS.

That legislation under the Initiative and Referendum will be crude and conflicting is not only obvious on its face, but is the demonstration of experience. One measure had to be rejected by the Oregon authorities because of the absence of an enacting clause — and the same difficulty is cropping out in other propositions. Two absolutely conflicting Laws were passed under the Initiative and Referendum at the same time in regard to catching salmon in the Columbia River. One of these Laws prohibited catching fish by wheels, and the other by nets. One way was the custom in one part of the River, and the other way in a different part, and the followers of each

desired to have a monopoly of the business. The result was that the entire important industry of salmon fishing on the Columbia was prohibited. Fortunately, the despised Legislature came to the rescue.

### CONSTITUTIONAL MUDDLE.

It is impossible in the space available to even enumerate the instances and phases of the serious Constitutional entanglements caused by the Initiative and Referendum in Oregon, both as regards Statutory Law and as to the Constitution itself. In 1910 an Amendment was adopted by a vote of only 69 per cent of the total vote of the State — and by only 5,139 majority of the votes cast on the proposition — making certain changes in the judicial system and in the procedure of the Supreme Court. Such a high legal authority as Mr. Frederick V. Holman, of Portland (ex-President of the State Bar Association and a Regent of the State University), claims that this Amendment was so crudely drawn that there is a serious question whether trial by jury has not been abolished in Oregon by it. Not only so, but the Supreme Court has been given power to determine what verdict shall be given in a criminal trial; under the same section there is also a provision — in effect — that no judgment, however unjust, can be re-examined by any

court; and the same amendment also allows the Supreme Court to find a defendant guilty of an offense for which he had not been indicted! This muddling Amendment was placed in the Constitution of Oregon by less than 38 per cent of the total number of men who voted the same day for Governor.

The Supreme Court of Oregon has experienced some difficulty in construing Initiative Amendments, and it has found it necessary to practically amend some of these Amendments by its decisions, by supplying omissions and by interpolating provisions not contained in the Amendments themselves!

Mr. Frank Foxcroft, in an article "Constitution Mending and the Initiative," in the "Atlantic Monthly", June, 1906, cites the case of Kadderly vs. Portland (44th vol. Oregon Reports.) The Supreme Court of Oregon said in that case:

> "* * * First, that laws proposed and enacted by the people under the initiative clause of the amendment 'are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will'; and, second, that the provision in the amendment to the effect that 'the veto power of the governor shall not extend to

> measures referred to the people' must necessarily 'be confined to the measures which the legislature may refer, and cannot apply to acts upon which the referendum may be invoked by petition.' "

The Court went on to say:

> "Unless the governor has the right to veto any act submitted to him, except such as the legislature may specially refer to the people, 'one of the safeguards against hasty or ill-advised legislation which is everywhere regarded as essential is removed.' "

After citing a number of unsatisfactory results under the Initiative Amendments of the Oregon Constitution, Mr. Frederick V. Holman said, in his speech as the President of the Oregon Bar Association, November 15, 1910:

> "* * * The crudity of these popular amendments of the Constitution and other enactments have been such that they have been amended by the Courts—practically legislating amendments by decisions—to make these enactments workable. Fortunately, perhaps, these initiative amendments of the Constitution do

> not provide against their amendment by judicial decisions."
>
> "* * * Having no established precedents in these innovations by the initiative and referendum powers in the Constitution, it is difficult to make them workable. It is somewhat like navigating a ship in the open sea without chart, compass or chronometer."

In the case of Straw v. Harris, 54 Oregon, 424, decided August 24, 1909, one of the main points decided was — That under the initiative and referendum amendments of the Constitution there are two separate and distinct law-making bodies, each equal, viz.: The Legislature and the people. The Court said:

> "By the adoption of the initiative and referendum into our Constitution, the legislative department of the State is divided into two separate and distinct law-making bodies. There remains, however, as formerly, but one legislative department of the State. * * * The powers thus reserved to the people merely took from the Legislature the exclusive right to enact laws, at the same time, leaving it a co-ordinate legislative body with them.

> "* * * Subject to the exceptions enumerated in the Constitution, as amended, either branch of the legislative department, whether the people, or their representatives, may enact any law, and may even repeal any act passed by the other."

With irresistible logic Mr. Holman argues that the situation in Oregon under the Initiative and Referendum Constitution as the Supreme Court has felt compelled to construe it, is a dangerous one. He points out that the Legislature can repeal an Initiative Law, and vice versa; and that the Legislature might pass one law and the people under the Initiative and Referendum might pass another directly in conflict; and he enquires: What would be the result? — for the Supreme Court has decided that each is equal as a law-making power. "It would be like the celebrated case of an irresistible force meeting an immovable body. Will not the Legislature become as useless as a vermiform appendage is to a human being? It may have some functions, but it is apparently a menace. Would it not be well to cut it out before it becomes dangerous?"

In a masterly speech against the Initiative and Referendum delivered in the Ohio House

of Representatives by the Hon. Carl F. Shuler, March 19, 1908, that gentleman said:

> "Some time ago I wrote to the mayors of ten towns in Oregon, and I received answers from six. Of the six, only one spoke in favor of the scheme, the other five being unfavorable. Some were less severe in their denunciation, but all believed that it is not accomplishing what was expected of it; that it is not so popular as it was; and that it is impossible for all the people to vote intelligently on all the questions to be submitted."

Originally the Portland "Oregonian," — which is one of the leading papers on the Pacific Coast — was in favor of the Initiative and Referendum; but after observing its operations for several years it has come out in opposition. It declares that the system has "the effect practically of abolishing Constitution and laws altogether. * * * The whole of this modern scheme of setting aside Constitution and laws, and of forcing legislation without debate or opportunity of amendment turns out badly, because it gives the cranks of the country an opportunity which they have not self-restraint enough to forego. It was not intended that representative

government should be abolished by the new system; but it has been abolished by it. The situation is the crank's paradise."

Prof. Oberholtzer does not hesitate to say in the new edition of his work that the real intention of the "inventors" of the Oregon plan of the Initiative, Referendum and the Recall, is the establishment of Socialism.

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## South Dakota.

THE ORIGINAL INITIATIVE STATE.

While Oregon was the first State to make the Initiative applicable to Constitutional Amendments, South Dakota was the first State to give its citizens the power to initiate Laws. This was done in 1898, and, as Prof. Oberholtzer observes ("The Referendum in America") this change was "one of the most important that has ever been made in the American system of government."

In South Dakota the people may initiate Laws for submission to popular vote upon the petition of five per cent of the "qualified electors of the State," and they may require a vote upon a Legislative Act upon the application of the same number of electors.

Like most of the other claims in favor of the Initiative and Referendum, the assertion that it

has proved satisfactory in South Dakota is to be received with a "big bag of salt." But even were it true, it would only illustrate what ex-President Roosevelt said in a speech at Phoenix, Arizona, March 20, 1911: "The principles of the Initiative and Referendum may or may not be adapted to the needs of a given State under given conditions; I believe they are useful in some communities and not in others." For instance: South Dakota is a purely agricultural State, with a very conservative population — naturally so for the reason that a large proportion of the people own the land on which they live, and are mainly native American or thrifty Teutonic. The Initiative and Referendum might be fairly successful in South Dakota but might be very harmful in a State like Ohio, or New York, or Illinois, where the conditions are altogether different.

### WHAT THE GOVERNOR SAYS.

But, as a matter of fact, there is reason for grave doubt whether even South Dakota has done a wise thing in extending the Initiative and Referendum as far as it has done. In a speech to the citizens of Kansas, October, 1911, Gov. Vessey of South Dakota, uttered these warning words:

> "If Kansas adopts the Initiative and Referendum you must not expect

that the millennium will be ushered in. Don't think for a minute that this system is a cure for all evils. It may cure some old evils, but certain I am that it brings on new evils which are very harmful to the State and its people. In the first place, it helps the scalawag as often as the good citizen, if not oftener. Every time a Law is passed to improve moral conditions, it is referended back to the people by the rag-tag element, and eighteen months must elapse before it goes into effect, even if by reason of the delay its opponents are not able to bring about its defeat. Also, it is expensive. An unscrupulous politician in my State who wanted to get a certain bill on the Statute books, started initiative petitions, and by paying ten cents for each signature got enough of them to compel the submission of the measure at an election. He was defeated, but at a cost to the State of $150,000. The Initiative and Referendum doesn't work as smoothly as those who believe in it think it will."

When Gov. Vessey was elected, in 1910, his name was on a seven-foot ballot, one foot being devoted to the candidates and six feet to Initiative and Referendum propositions.

# A Few Closing Words.

What the American people need is not more Laws and a new Constitution so much as a broader and deeper realization of their privileges and obligations as citizens of the Republic. The most flagrant crime in America today—a crime more harmful than even "graft"—is the apathy and indifference of the average voter in regard to his duties as a citizen of the grandest, the freest, and the altogether most glorious country under the sun. What we need is not a mere baptism, but a very flood of Civic Patriotism! More Laws and a new Constitution—however much they may be required—will not give that.

As it is, most Americans are content to let politics be the exclusive vocation of the "politicians." They do not "see anything in it" for themselves, and so they let the bosses and "the interests" run things; and then they wonder why things go wrong! Conditions are bad enough under the Representative plan; under the Initiative and Referendum, as an established and universal system in the Constitutions of the States, and particularly in the Federal Constitu-

tion, there would be a grave likelihood that the French Commune would be a Sunday-school in comparison.

We do not need any more of the Initiative and Referendum. The samples we have had are enough. They have demonstrated that the system is not only a failure as an effective and satisfactory instrument of Democratic government, but that it is full of vicious possibilities. The day that the Initiative and Referendum is engrafted on the Federal Constitution—which God forbid—will be recorded in history as the beginning of the end of the American Republic.

But the Initiative and Referendum will in due time be relegated to the limbo of discarded political nostrums; and the Republic will live;—and it will continue to grow in grandeur and to become more and more splendid as the land of ordered Liberty and true Democracy.

# Appendix.

### DANIEL WEBSTER ON "CONSTANT CLAMORERS."

In 1833, Daniel Webster, in a speech in the United States Senate, gave utterance to the following outburst against "constant clamorers." The conditions to-day are so similar to those described by Webster as existing seventy-eight years ago, that the speech would be opportune if made at the present session of Congress:

> "There are persons who constantly clamor. They complain of oppression, speculation and the pernicious influence of accumulated wealth. They cry out loudly against all banks and corporations and all the means by which small capitals become united in order to produce important and beneficial results. They carry on a mad hostility against all established institutions. They would choke up the fountains of industry and dry all its streams. In a country of unbounded liberty they clamor against oppression. In a country of perfect equality they would move heaven and earth against privilege and monopoly. In a country where property is more equally divided than anywhere else they rend the air with shouting of agrarian doctrines. In a country where the wages of labor are high beyond all parallel they would teach the laborer that he is but an oppressed slave. Sir, what can such men want? What do they mean? They can want nothing, sir, but to enjoy the fruits of other men's labor. They can mean nothing but disturbance and disorder, the diffusion of corrupt principles and the destruction

of the moral sentiments and moral habits of society. A licentiousness of feeling and of action is sometimes produced by prosperity itself. Men cannot always resist the temptation to which they are exposed by the very abundance of the bounties of Providence and the very happiness of their own condition."

### AN ANCIENT EXAMPLE.

In an article entitled "Representative as Against Direct Government" in the "Atlantic Monthly" (October, 1911) the Hon. Samuel W. McCall says:

> "Those who advocate the direct action of our great democracy might study with a good deal of profit the history of the little state (Athens) to which I have just been referring. No more brilliant people ever existed than the Athenian people. They had a genius for government. The common man was able to 'think imperially.' Their great philosopher, Aristotle, could well speak of the Athenian as a political animal. They achieved a development in literature and art which probably has never since been reached. They could boast of orators and philosophers to which those of no other nation can be compared. We marvel when we consider the surviving proofs of their civilization. But when they did away with all restraints upon their direct action in the making and enforcement of laws, in administering justice and in regulating foreign affairs, their greatness was soon brought to an end, and they became the victims of the most odious tyranny to which any people can be subjected, the tyranny that results from their own unrestrained and unbridled action.
>
> "It is said that the history of those distant times can present no useful precedent for our own guidance; but in what respect is human

nature different to-day? Whatever new stars our telescopes may have discovered, whatever new inventions may have been brought to light, and whatever advances may have been made in scientific knowledge, the mainsprings of human action are substantially the same to-day that they were in the time of the Greeks. We should be rash indeed to assume that we shall succeed where they failed, and that we can disregard their experience with impunity."

### THE "FATHERS" KNEW THEIR BUSINESS.

Discussing the deliberate choice by the framers of the Federal Constitution of the Representative over the Direct system of government, the Hon. Samuel W. McCall says ("Atlantic Monthly," October, 1911):

> "The framers of our Constitution were endeavoring to establish a government which should have sway over a great territory and a population already large and which they knew would rapidly increase. They were about to consummate the most democratic movement that had ever occurred on a grand scale in the history of the world. They well knew from the experiments of the past the inevitable limitations upon direct democratic government, and, being statesmen as well as democrats, they sought to make their government enduring by guarding against the excesses which had so often brought popular governments to destruction. They established a government which Lincoln called 'of the people, by the people, for the people,' and in order effectively to create it they adopted limitations which would make its continued existence possible. They knew that, if the governmental energy became too much diluted and dissolved, the evils of anarchy would result, and that there would follow a reaction to the other

extreme, with the resulting overthrow of popular rights. They saw clearly the line over which they might not pass in pretended devotion to the democratic idea without establishing government of the demagogue, by the demagogue, and for the demagogue, with the recoil in favor of autocracy sure speedily to follow; for they knew that the men of the race from which they sprang would not long permit themselves to be the victims of misgovernment, and that they would prefer even autocracy to a system under which the great ends of government should not be secured, or should be perverted."

### "PURE" VS. "REPRESENTATIVE" DEMOCRACY.

Prof. Garner, in his work "Introduction to Political Science," thus differentiates between "Pure" and "Representative" Democracy:

> "Democracies are of two kinds—pure, or direct, and representative, or indirect. A pure democracy is one in which the will of the state is formulated and expressed directly and immediately through the people acting in their primary capacity. A representative democracy is one in which the state will is ascertained and expressed through the agency of a small and select number, who act as the representatives of the people. A pure democracy is practicable only in small states, where the voting population may be assembled for purposes of legislation and where the collective needs of the people are few and simple. In large and complex societies, where the legislative wants of the people are numerous, the very necessities of the situation make government by the whole body of citizens a physical impossibility."

Tucker, in his "Constitution of the United States" (p. 87), says that the Representative system "is the only practicable way by which a large country can give expression to its will in deliberate legislation."

In "Black's Constitutional Law," p. 28, the following distinction is drawn:

> "The system of government in the United States and in the several states is distinguished from a pure democracy in this respect, that the will of the people is made manifest through representatives chosen by them to administer their affairs and make their laws, and who are intrusted with defined and limited powers in that regard, whereas the idea of a democracy, non-representative in character, implies that the laws are made by the entire people acting in a mass-meeting or at least by universal and direct vote.
>
> "Representation is one of the very essentials of a republican form of government."

In No. 48 of the "Federalist" (XII "Hamilton's Works," p. 28) Madison refers to a Democracy as * * *

> "where a multitude of people exercise in person the legislative functions, and are continually eoxpsed, by their incapacity for regular, deliberate and concerted measures, to the intrigues of their executive magistrates;" and to a republic "where the executive magistracy is carefully limited both in the extent and in the duration of its power, and where the legislative power is exercised by an assembly * * * ."

In the debates in the convention held in New York on the adoption of the Constitution, Hamilton said:

> "It has been observed by an honorable gentleman that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved that no position in politics is more false than this. The ancient democracies in which the people themselves deliberated never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled the field of debate presented an ungovernable mob not only incapable of deliberation, but prepared for every enormity."

John Marshall, in the Virginia Convention, said:

> "I shall ask the worthy member only, if the people at large, and they alone, ought to make laws and treaties? Has any man this in contemplation? You cannot exercise the powers of government personally yourselves. You must trust to agents. * * *
>
> "Can the whole aggregate community act personally? I apprehend that every gentleman will see the impossibility of this. Must they, then, not trust them to others? To whom are they to trust them but to their representatives, who are accountable for their conduct?"

### "A REPUBLICAN FORM OF GOVERNMENT."

The late Chief Justice Fuller, of the U. S. Supreme Court, in delivering the opinion in *re* Duncan, 139 U. S. 449, stated that:

> "By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that

> form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities."

In his "Thoughts on Government," which he addressed to the Virginians, John Adams said:

> "There is no good government but what is republican." * * * "The only valuable part of the British Constitution at the time he wrote was, he declared, republican." * * * "In a large society inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step then, is to depute power from the many to a few of the most wise and good."

### "THE GREATEST TRAGEDY OF CHRISTENDOM."

On April 19, 1911, the Cincinnati "Enquirer" contained the following remarkable editorial:

> "A pertinent illustration of the dangerous possibilities lying in the establishment and enforcement of the referendum has been dug out of the pages of the long ago by a prominent Cincinnati attorney. Imbued with a modesty by no means in keeping with his attainments, he has plead for anonymity. Commenting upon an editorial which recently appeared in The Enquirer, which discussed at length, and freely, the modern tendencies of legislative bodies to-

wards isms of all kinds, and notably those of popular election of United States Senators, the initiative and referendum and the heretical and viciously dangerous recall of Judges idea, the writer invites attention to the twenty-third chapter of St. Luke, the eighteenth chapter of St. John, as well as the co-ordinate chapters in the other of the four Gospels bearing upon the trial and crucifixion of the Nazarene.

"The picture of the Galilean before the Roman Governor in the hall of judgment is one familiar to most of the civilized world. Flanked by the panoply and gorgeousness with which Rome surrounded her colonial Governors, and imbued with a sense of justice and a knowledge of the law, the mighty Pilate could find no fault with the humble Teacher who stood before him. But with the same cringing subservience and fear that would control and dominate Judges to-day if they were subject to the recall, he put the matter up to the surging mob that surrounded the helpless and inoffensive prisoner.

"The referendum accomplished its ghastly purpose with a celerity and avidity that astonished even the martial and warlike representative of the Caesars. One of the greatest tragedies of Christendom was the product of one of the earliest employments of the referendum. The Man of Peace had practiced no sedition, was guilty of no felony, but had simply taught a philosophy and gospel not in accordance with the practices and lives of the people among whom He lived.

"Human nature changes not. Ochlocracy as established to-day, would demand the same sacrifice of life or principle. Reason and judgment are quickly swept to the four winds when passion or greed is inflamed. The fate of the Nazarene would be the fate of men and principles to-day were the tenets of representative

government broken down and discarded. The foundation upon which the fathers built this republic are still stanch and sound. The superstructure erected thereon has brought happiness and prosperity to a great people. Tampering with their splendid legacy will be but to invite unrest, distrust and possible disaster."

### LEGISLATIVE "CURE-ALLS."

In an address delivered before the Chicago Civic Federation, February 4, 1911, Prof. J. Laurence Laughlin, head of the Department of Political Economy of the University of Chicago, said:

> "Is there not an unfortunate passion for trying to cure the ills of society by legislation? That is, we are asked to think it possible by legislation to change the character and nature of man. To change the external envelope of government by which we are surrounded is theoretically taken as a feasible means of changing the nature, desires, and purposes of the individual voter within the limits of a country. You might as well try to change iron into steel by changing the governors of the states containing the iron-mines. Somehow or other we must get down to the causes which affect human nature itself; we should spend less time on the scenery of the stage than on the men who are moving on it. This is the fundamental weakness of Socialism; that it hopes to recreate the world by changing the social system without changing the qualities of dear old human nature itself. It is the sign of a superficial man to put forward a nostrum sure to cure all the ills of body and soul. We have too many quacks in politics and social reform; we have too many persons proposing infallible remedies for all political and economic abuses—we might call

them the 'Lydia Pinkhams of the social system.' To many, this might seem to be a sufficient reason for hesitancy in opening the door wide for rash legislation by the Initiative and Referendum.

"No doubt all of us agree with the purposes of those who favor the Initiative and Referendum; but we wish in all candor to be sure that the means to carry out these purposes—the special laws—are sufficient for the desired end. Let me illustrate: The voters of Illinois have sent to Springfield some legislators so lacking in honesty, honor and loyalty to the people that we are a stench in the nostrils of the whole nation; and honest men hang their heads in shame whenever Illinois politics are mentioned. Now every man here would like to wipe out this disgrace. Can it be done by the Initiative and Referendum? Are we not compelled to answer that it can be done only if we assume that corrupt voters can be made honest by legislation? Such a result. I submit, cannot be accomplished by any act of laws; you might as well try by law to require every man in Illinois to have blue eyes. Water will not rise higher than its source."

## "UTTERLY AND HOPELESSLY UNDEMOCRATIC."

Criticizing the new Initiative — Referendum — Recall Constitution of Californit, and the method of its adoption, the New York "Times" (independent Democratic), of October 18, 1911, said:

"This new method of handling the basic law of the State is advocated in the name of democracy. In reality it is utterly and hopelessly undemocratic. While pretending to give greater rights to the voters, it deprives them of the opportunity effectively and intelligently to

use their powers. They receive the right to vote much oftener and on a larger number of matters than before, but the number and variety of the votes they are called on to cast does away with all chance of really using sense and discretion as to all of them. The new method is proposed as a check on the machines. But the strength of the machines lies in the inattention and indifference of the voters, and the voters are sure in the long run to be more inattentive and indifferent in proportion to the number of the questions forced upon them at one time. When the machine managers get familiar with the working of the new method, they will work it for their own ends far more readily than they work the present method. The average voter, muddled and puzzled and tired by the impossible task of really understanding and deciding on a mass of matters, will give it up, and then the politicians will get in their fine work.

"The remedy for the undoubted evils of machine politics is not in multiplying, confusing, and making more troublesome the duties of the voter, but in simplifying and restricting them and making the discharge of each of them more effective. So long as we make our political business so difficult that common men cannot, will not, and ought not to give to it the time and labor absolutely needed for success in it, so long there will be professionals to attend to it. It would be as easy to run the business of a big railway by leaving every detail of its managment to a vote of the shareholders as it will be to run the business of a State under the new system. And the results in the latter case will be as a mischievous as those in the former would be sure to be."

### GOV. O'NEAL, OF ALABAMA, ON THE I. & R.

The following is taken from the Cincinnati "Enquirer" of December 8, 1911:

> "Denouncing the initiative, referendum and recall as 'dangerous innovations offered as a panacea for all our social and political ills' and suggesting that there is already too much law in this country and the greatest service that legislators could give the people would be to spend two years in repealing laws instead of creating more, Governor Emmet O'Neal, of Alabama, discussed 'Representative Government' before the members of the Cincinnati Metal Trades Association at the Business Men's Club last night.
>
> "The Governor did not mince words in his attack upon the three principles which are now prominently before the people of Ohio. He declared that the wisdom of our forefathers, who made the constitution, was exemplified when they discarded the theories of direct legislation or a pure Democracy and established the country upon the basis of representative government. Any constitutional provision that weakens or impairs the power and efficiency of either of the three co-ordinate departments of government, he holds, must necessarily weaken and impair the efficiency and harmony of the whole.
>
> "'Unless this political heresy is checked,' he continued, 'the hosts of Socialism, re-enforced by selfish and time-serving politicians and recruited by all the elements of discontent, will soon direct their attacks against the Federal Government itself and gradually sap and undermine the foundations of our free institutions.'"